In the

United States Court of Appeals

For the Seventh Circuit

No. 11776

TIMES FILM CORPORATION,

Plaintiff-Appellant,

vs.

CITY OF CHICAGO, RICHARD J. DALEY AND TIMOTHY J. O'CONNOR,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

INDEX.

Placita 1
Statement pursuant to Rule 10(b) 2
Complaint, filed July 7, 1955 4
Ex. B—Chapter 155—Motion Pictures—Exhibition 8
Security for Costs, filed July 7, 1955 11
Answer, filed July 25, 1955 12
Motion for Trial, filed Sept. 12, 1955 15
Affidavit of Abner J. Mikva 15
Order of Reference to Master, entered Sept. 12, 1955 .. 16
Amended order of Reference, entered Oct. 3, 1955 17

TRANSCRIPT OF PROCEEDINGS.

Witnesses for Plaintiff.

Testimony of:
Greenspan, Ida 187
Jorgensen, Jessie 198
Joyce, Edith 156
McGill, Beatrice H. 173
O'Connor, Timothy James 205
O'Hallaren, Josephine Frances 99
Sheehan, Ignatius J. 37
Shelton, William 18
Colloquy 257
Order re Security for Costs, entered Nov. 15, 1955 266
Additional Security for Costs, filed Nov. 28, 1955 266
Master's Report, filed Jan. 31, 1956 267
Master's Certificate of Costs 285
Objections to Master's Report, filed Feb. 8, 1956 286
Order re Objections, entered Feb. 27, 1956 289
Instructions to Jury, filed Feb. 29, 1956 290

Verdict, filed Feb. 29, 1956 290
Memorandum, filed Mar. 21, 1956 291
Order on Objections, etc., entered Mar. 21, 1956 297
Order re Amendment to Master's Report, entered Mar. 29, 1956 298
Findings of Fact, etc., filed Apr. 27, 1956 298
Conclusions of Law 301
Decree, entered Apr. 27, 1956 303
Notice of Appeal, filed May 4, 1956 306
Statement of Points 307
Designation of Record 309
Bond on Appeal 311
Order re Exhibits, etc. 312
Clerk's Certificate 313

1 Pleas had at a regular term of the United States District Court for the Eastern Division of the Northern District of Illinois begun and held in the United States Court Rooms in the City of Chicago in the Division and District aforesaid on the first Monday of April (it being the 2nd day thereof) in the Year of Our Lord One Thousand Nine Hundred Fifty-Six and of the Independence of the United States of America, the 180th Year.

Present:

Honorable John P. Barnes, Chief District Judge.
Honorable William H. Holly, District Judge.
Honorable Philip L. Sullivan, District Judge.
Honorable Michael L. Igoe, District Judge.
Honorable William J. Campbell, District Judge.
Honorable Walter J. LaBuy, District Judge.
Honorable J. Sam Perry, District Judge.
Honorable Win G. Knoch, District Judge.
Honorable Julius J. Hoffman, District Judge.
Roy H. Johnson, Clerk.
William W. Kipp, Sr., Marshal.

Friday, April 27, 1956.

Court met pursuant to adjournment.

Present: Honorable J. Sam Perry, Trial Judge.

2 IN THE UNITED STATES DISTRICT COURT

Northern District of Illinois,

Eastern Division.

Times Film Corporation, a New York corporation, *Plaintiff-Appellant,* *vs.* City of Chicago, a Municipal corporation, Richard J. Daley and Timothy J. O'Connor, *Defendants-Appellees.*	Civil Action No. 55 C 1006.

EXHIBIT TO RECORD ON APPEAL IN ACCORDANCE WITH RULE 10B OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Pursuant to Rule 10B of the United States Court of Appeals for the Seventh Circuit, Times Film Corporation, a New York Corporation, Plaintiff, Appellant herein, by its attorney, Abner J. Mikva, submits the following:

1. Caption of Case:

Times Film Corporation, a New York corporation, *Plaintiff-Appellant,* *vs.* City of Chicago, a Municipal corporation, Richard J. Daley and Timothy J. O'Connor, *Defendants-Appellees.*	Civil Action No. 55 C 1006.

2. The suit was commenced with the filing of plaintiff's complaint in the United States District Court, North-
3 ern District of Illinois, Eastern Division, on July 7, 1955.

3. No parties were added or appeared in the above entitled cause subsequent to the filing of initial pleadings. All parties to the suit are named as above.

4. Defendants filed their answer in this cause on July 25, 1955.

5. The above entitled cause was referred to Master in Chancery David J. Shipman pursuant to orders of this Court entered September 12, 1955, and October 3, 1955.

6. The report of the Master in Chancery submitted on January 31, 1956, contained three basic rulings.

(a) That the calculated purpose of the film in litigation is not substantially to arouse the sexual desires within the definition of the Superior Court of Illinois.

(b) The interest of the State in preventing the probability of the arousal of sexual desires in normal persons is not of sufficiently overriding consideration to justify an ordinance authorizing prior restraint on freedom of expression.

(c) The ordinance in question is in question because of vagueness and lack of standard.

7. Defendants herein filed objections to the said report of the Master in Chancery on February 8, 1956.

8. The decree of this Court was entered April 27, 1956.

9. Plaintiff filed notice of appeal on May 4, 1956.

Abner J. Mikva,
Attorney for Plaintiff and Appellant,
231 South La Salle Street,
By Seymour I. Regal.

4 IN THE UNITED STATES DISTRICT COURT.

• • (Caption—55-C-1006) • •

Be It Remembered, that on to wit, the 7th day of July, 1955, the above-entitled action was commenced by the filing of the Complaint in the office of the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, in words and figures following, to wit:

5 IN THE UNITED STATES DISTRICT COURT.
(Caption—55-C-1806)

COMPLAINT.

Now comes Times Film Corporation, plaintiff herein, by its attorneys, Felix J. Bilgrey and Abner J. Mikva, and complain of the defendants, and allege:

Count I.

1. The ground upon which the jurisdiction of the court depends is diversity of citizenship between the parties hereto. The amount in controversy herein exceeds Three Thousand Dollars ($3,000.00) exclusive of interest and costs. Plaintiff is a corporation incorporated under the laws of the State of New York with its principal office and place of business in the City of New York, State of New York, and is a citizen of the State of New York. Defendant, City of Chicago, is a municipal corporation duly or-
6 ganized and existing under the laws of the State of Illinois and is a citizen of the State of Illinois. Defendant Richard J. Daley is the duly elected and acting mayor of the City of Chicago and is a citizen of the State of Illinois. Defendant Timothy J. O'Connor is the duly appointed and acting Commissioner of Police of the City of Chicago and is a citizen of the State of Illinois.

2. Plaintiff has the exclusive right to distribute, to license for exhibition and to exhibit in the City of Chicago a certain photoplay or motion picture film entitled "The Game of Love," a print of which motion picture is attached hereto, marked Exhibit "A" and made a part hereof. Said motion picture film is adapted from a classical story "Le Ble en Herbe" written by the French authoress Gabrielle Claudine Johvenal known under the penname of Colette.

3. Pursuant to the provisions of a certain municipal ordinance enacted by the City of Chicago, being Sections 155-1 to 155-7 of the Municipal Code of the City of Chicago, a copy of which ordinance is attached hereto, marked Exhibit "B" and made a part hereof, plaintiff applied to defendant O'Connor for a permit to exhibit the motion picture film "The Game of Love". Defendant O'Connor

on June 2, 1955 notified plaintiff that he would not issue such a permit on the ground that the commanding officer of his censor unit had rejected the movie because "it is not acceptable to standards of decency with immorality featured and dialogue unfit". Pursuant to the municipal ordinance above referred to plaintiff thereupon, on June 6, 1955, appealed the decision of defendant O'Connor to defendant Daley. On June 20, 1955 defendant Daley
7 denied the appeal of plaintiff from the order of defendant O'Connor and refused to issue to plaintiff a permit to exhibit the film "The Game of Love" in the City of Chicago.

4. As a result of the foregoing actions of the defendant in denying plaintiff a permit to exhibit said film and as a result of the requirements of the municipal ordinance above referred to that a permit must be obtained prior to the exhibition of any motion picture film in the City of Chicago, plaintiff is forbidden and prohibited from exhibiting said motion picture under penalty of arrest and criminal prosecution and the plaintiff has been directly damaged by not being permitted to exhibit said film.

5. Under Section 155-4 of said ordinance defendant O'Connor and/or defendant Daley had the duty to grant the permit requested since the motion picture film "The Game of Love" admittedly does not come within the description of films for which said defendants have the duty to refuse permits.

6. Defendants' actions in denying plaintiff the requested permit were unlawful and void in that they far exceed the discretion vested in them by the municipal ordinance above referred to.

Count II.

Plaintiff for a second cause of action avers:

8 1. The action arises under the first and fourteenth amendments to the Constitution of the United States, as hereinafter more fully appears. The matter in controversy exceeds, exclusive of interest and costs, the sum of Three Thousand Dollars ($3,000.00).

2. Plaintiff is a corporation incorporated under the laws of the State of New York with its principal office and place of business in the City of New York, State of New

York, and is a citizen of the State of New York. Defendant, City of Chicago, is a municipal corporation duly organized and existing under the laws of the State of Illinois and is a citizen of the State of Illinois. Defendant Richard J. Daley is the duly elected and acting mayor of the City of Chicago and is a citizen of the State of Illinois. Defendant Timothy J. O'Connor is the duly appointed and acting Commissioner of Police of the City of Chicago and is a citizen of the State of Illinois.

3. Plaintiff repeats and realleges all of Paragraphs 2, 3 and 4 of Count I above as if they were set forth in full therein.

4. Defendants' actions in denying plaintiff the requested permit are an infringement and denial to plaintiff and its constitutional rights to freedom of speech and of press and to engage in lawful business activities in the City of Chicago.

9 Count III.

Plaintiff for a third cause of action avers:

1. Plaintiff repeats and realleges Paragraphs 1, 2 and 3 of Count II of this Complaint as if they were set forth in full herein.

2. Said municipal ordinance violates on its face the first and fourteenth amendments to the Constitution of the United States and unlawfully abridge the rights protected therein.

Wherefore, plaintiff prays:

(a) That the court issue an order directed to defendants City of Chicago, Richard J. Daley, Mayor of said City of Chicago, and Timothy J. O'Connor, Police Commissioner of said City of Chicago, commanding defendants to forthwith issue to plaintiff the permit required by the aforesaid municipal ordinance.

(b) That the court issue an order restraining defendants City of Chicago, Richard J. Daley, as Mayor of said City of Chicago and Timothy J. O'Connor, as Police Commissioner of said City of Chicago, individually and as acting officers of the City of Chicago, and all police officers, agents, servants and employees acting for and on behalf of the City of Chicago from preventing, hindering or otherwise interfering with the plaintiff, its officers or agents in

the exhibition of the film "The Game of Love" in the City of Chicago, Illinois.

(c) That the court provides such other and further relief as justice shall require.

Times Film Corporation,
a New York corporation,
By Felix J. Bilgrey of Bilgrey & Levinson and
Abner J. Mikva,
By Jean Goldwurm.

A. J. Mikva,
231 S. La Salle St.,
An. 3-3700.

State of Illinois, }
County of Cook. } ss.

Jean Goldwurm, being first duly sworn on oath, deposes and says that he is the ..... of Times Film Corporation, and has read the above and foregoing complaint by him subscribed, that he knows the contents thereof and that the same is true in substance and in fact.

Jean Goldwurm.

Subscribed and sworn to before me this 29th day of June, 1955.

Joseph Horowitz,
Notary Public.

(Seal)

Notary Public in the State of New York.
No. 41-6966800.
Qualified in Queens County.
Certf. filed in N. Y. County Clerk.
Commission Expires March 30, 1956.

(Jurat Attached But Not Copied):

10½

Exhibit "B".

Chapter 155.

Motion Pictures.

Exhibition.

155-1. It shall be unlawful for any person to show or exhibit in a public place, or in a place where the public is admitted, anywhere in the city any picture or series of pictures of the classes or kinds commonly shown in mutoscopes, kinetoscopes, or cinematographs, and such pictures or series of pictures as are commonly shown or exhibited in so-called penny arcades, and in all other automatic or motion picture devices, whether an admission fee is charged or not, without first having secured a permit therefor from the commissioner of police.

It shall be unlawful for any person to lease or transfer, or otherwise put into circulation, any motion picture plates, films, rolls, or other like articles or apparatus, from which a series of pictures for public exhibition can be produced, to any exhibitor of motion pictures, for the purpose of exhibition within the city, without first having secured a permit therefor from the commissioner of police.

The permit herein required shall be obtained for each and every picture or series of pictures exhibited and is in addition to any license or other imposition required by law or other provision of this code.

Any person exhibiting any picture or series of pictures without a permit having been obtained therefor shall be fined not less than fifty dollars nor more than one hundred dollars for each offense. A separate and distinct offense shall be regarded as having been committed for each day's exhibition of each picture or series of pictures without a permit. (Amend. Coun. J. 12-21-39, p. 1396).

155-2. Before any such permit is granted, an application in writing shall be made therefor, and the plates, films, rolls, or other like apparatus by or from which such picture or series of pictures are shown or produced, or the picture or series of pictures itself as shown or exhibited, shall be shown to the commissioner of police, who shall inspect such plates, films, rolls, or apparatus, or such picture or series of pictures, or cause them to be inspected,

and within three days after such inspection he shall either grant or deny the permit. In case a permit is granted, it shall be in writing and in such form as the commissioner of police may prescribe.

155-3. The fee for the original permit in each case shall be three dollars for each one thousand lineal feet of film or fraction thereof, and for each duplicate or print thereof an additional fee of one dollar for each one thousand lineal feet of film or fraction thereof, which fee shall be paid to the city collector before any permit is issued.

155-4. Such permit shall be granted only after the motion picture film for which said permit is requested has been produced at the office of the commissioner of police for examination or censorship.

If a picture or series of pictures, for the showing or exhibition of which an application for a permit is made, is immoral or obscene, or portrays depravity, criminality, or lack of virtue of a class of citizens of any race, color, creed, or religion and exposes them to contempt, derision, or obloquy, or tends to produce a breach of the peace or riots, or purports to represent any hanging, lynching, or burning of a human being, it shall be the duty of the commissioner of police to refuse such permit; otherwise it shall be his duty to grant such permit.

In case the commissioner of police shall refuse to grant a permit as hereinbefore provided, the applicant for the same may appeal to the mayor. Such appeal shall be presented in the same manner as the original application to the commissioner of police. The action of the mayor on any application for a permit shall be final.

155-5. In all cases where a permit for the exhibition of a picture or series of pictures has been refused under the provisions of the preceding section because the same tends towards creating a harmful impression on the mind of children, where such tendency as to the minds of adults would not exist if exhibited only to persons of mature age, the commissioner of police may grant a special permit limiting the exhibition of such picture or series of pictures to persons over the age of twenty-one years; provided, such picture or pictures are not of such character as to tend to create contempt or hatred for any class of law abiding citizens.

When such special permit has been issued, it shall be unlawful for any person exhibiting said picture to allow any persons under the age of twenty-one years to enter the place where same is being exhibited or to remain in said

place while any part of said picture or series of pictures is being shown.

Any person violating any of the provisions of this section shall be fined not less than ten dollars nor more than twenty-five dollars for each offense, and the admission of each person under twenty-one years of age, or permission to remain or such person under twenty-one years of age, shall constitute a distinct and separate offense.

155-6. The written permit provided for in this chapter shall be posted at or near the entrance of the theater, hall, room, or place where any permitted picture or series of pictures is being exhibited, at such a place and in such a position that it may easily be read by any person entering such theater, hall, room or place at any time when any such permitted picture or series of pictures is being exhibited whether in the day time or in the night time.

155-7. When a permit to show a picture or series of pictures is once granted to an exhibitor, the picture or series of pictures may be shown by any other exhibitor; provided, that the written permit is actually delivered to such other exhibitor and that a written notice of the transfer or lease to such other exhibitor is first duly mailed by the transferee or lessee to the commissioner of police. Any number of transfers or leases of the same picture or series of pictures may be made, provided always that the permit is actually delivered to the transferee or lessee and that such written notice be first mailed to the commissioner of police.

Said written notice shall contain the name and a brief description of the picture or series of pictures, the number of the permit, and the location of the building or place where the transferee or lessee proposes to exhibit such picture or series of pictures. The exhibition by any transferee or lessee of any permitted picture or series of pictures without first mailing such notice shall be considered a violation of this chapter, and a separate offense shall be regarded as having been committed for each day's exhibition by a transferee or lessee of each picture or series of pictures without the mailing of such notice.

In case a permit shall be refused for any such motion picture plates, films, rolls, or other like articles or apparatus from which a series of pictures for public exhibition can be produced, it shall be unlawful for any person to lease or transfer the same to any exhibitor of motion picture or otherwise put the same into circulation for purposes of exhibition within the city.

13 And on the same day, to wit, the 7th day of July, 1955 there was filed in the Clerk's office of said Court a certain Security for Costs in words and figures following, to wit:

14 UNITED STATES DISTRICT COURT.

(Caption—55-C-1006)

SECURITY FOR COSTS.

We enter our security for costs in this cause, and promise to pay on demand, all fees which the Times Film Corporation, plaintiff, must by law pay to the clerk, marshal or other officer of this court, and all costs which may accrue to any other party in this action; and in default of payment by the plaintiff of any fees and costs ordered or adjudged to be paid by the plaintiff, we hereby agree and stipulate that execution may issue against us property for all costs not exceeding two hundred and fifty dollars ($250.00), taxed against the plaintiff.

Sealed with ..... seal..... and dated at Chicago, Illinois, this 1st day of July, A. D. 1955.

United States Fidelity and Guaranty Company,
By J. R. Solomon, (Seal)
Attorney-in-Fact.
Residence: Illinois.

Acknowledged before me this 1st day of July, 1955.

.....
Notary Public.

15 And afterwards on, to wit, the 25th day of July, 1955 came the Defendants by their attorneys and filed in the Clerk's office of said Court their certain Answer in words and figures following, to wit:

16 IN THE UNITED STATES DISTRICT COURT.

(Caption—55-C-1006)

ANSWER OF DEFENDANTS.

The defendants City of Chicago, a Municipal corporation, Richard J. Daley, Mayor of the City of Chicago, and Timothy J. O'Connor, Commissioner of Police of the City of Chicago, answering the complaint of the plaintiff herein, say that:

1. As to paragraph 1 of Count I the defendants admit the matters and things therein alleged.

2. As to paragraph 2 of said Count II these defendants have no information as to the allegations contained therein and ask for proof thereof.

3. As to paragraph 3 of said Count I the defendants admit the allegations thereof, Further answering said paragraph 3 the defendants state that a permit to exhibit the motion picture "The Game of Love" was denied and refused to the plaintiff because the said picture film was immoral and obscene and violative of Section 155-4 of the Municipal Code of Chicago.

17 4. As to paragraph 4 of said Count I these defendants admit the matters and things therein alleged.

5. As to paragraph 5 of said Count I the defendants deny that under Section 155-4 of the Municipal Code of Chicago the defendant O'Connor and/or defendant Daley had the duty to grant the permit requested because the said motion picture film does not come within the description of films for which said defendants have a duty to refuse permits but on the contrary these defendants state that said film does come within the description of films for which said defendants have the duty to refuse permits; that said motion picture film was violative of said Section 155-4 in that it is immoral and obscene requiring said defendants to deny plaintiff a permit to exhibit said film.

6. As to paragraph 6 of Count I these defendants deny that they exceeded their lawful authority under the ordi-

nances of the Municipal Code of Chicago in denying said permit to the plaintiff herein.

7. As to paragraph 1 of Count II the defendants deny that this action arises under the First and Fourteenth Amendments of the Constitution of the United States as therein stated.

8. As to paragraph 2 of Count II the defendants admit the allegations thereof.

9. As to paragraph 3 of Count II the defendants repeat and reallege their answers to paragraphs 2, 3 and 4 of Count I as their answer to paragraphs 2, 3 and 4 of Count II.

10. As to paragraph 4 of Count II the defendants deny that their actions infringed or denied to the plaintiff its constitutional rights of freedom of speech and of the press and to engage in lawful business activities in the City of Chicago.

11. As to paragraph 1 of Count III the defendants repeat and reallege their answers to paragraphs 1, 2 and 3 of Count II of plaintiff's complaint as their answers to paragraphs 1, 2 and 3 of Count III of plaintiff's complaint.

12. As to paragraph 2 of Count III of said complaint the defendants deny that the said municipal ordinance violates on its face the First and Fourteenth Amendments to the Constitution of the United States and unlawfully abridges the rights protected therein.

13. Further answering said Count III the defendants deny that the plaintiff is entitled to the relief prayed in paragraphs (a), (b) and (c) of said Count III.

City of Chicago,
a Municipal corporation,

Richard J. Daley,
Mayor of the City of Chicago,

Timothy J. O'Connor,
Commissioner of Police of the City of Chicago,

By: John C. Melaniphy,
Acting Corporation Counsel.

19 State of Illinois, } ss:
County of Cook. }

Timothy J. O'Connor, being duly sworn on oath says that he is Commissioner of Police of the City of Chicago and a defendant herein; that he has read the answer of the defendants herein, that he knows the contents thereof and that the same is true.

Timothy J. O'Connor.

Subscribed and Sworn to before me this 22nd day of July, A. D., 1955.

Edward R. Hartigan,
Notary Public.

(Seal)

I hereby certify that I served the within answer to the plaintiff's complaint herein upon counsel for the plaintiff by placing a copy thereof in an envelope addressed to:

Mr. Felix J. Bilgrey,
c/o Bilgrey & Levinson,
New York, N. Y.
and
Mr. Abner J. Mikva,
231 S. LaSalle Street,
Chicago, Illinois,

and depositing the same in the United States mail box located in the City Hall, Chicago, Illinois this 22nd day of July, A. D. 1955.

Edward R. Hartigan,
Assistant Corporation Counsel.

20 And afterwards on, to wit, the 12th day of September, 1955 came the Plaintiff by its attorneys and filed in the Clerk's office of said Court its certain Motion in words and figures following, to wit:

21 IN THE UNITED STATES DISTRICT COURT.
• • (Caption—55-C-1006) • •

MOTION.

Now comes Time Film Corporation, a New York corporation, plaintiff, by its attorneys, Goldberg, Devoe, Brussell & Shadur, and moves that the Court set the above entitled cause for trial on a date certain, in support of which Motion the affidavit of Abner J. Mikva is attached hereto and made a part hereof.

Times Film Corporation,
By Goldberg, Devoe, Brussell & Shadur
By: Abner J. Mikva.

22 State of Illinois, } ss:
County of Cook. }

Abner J. Mikva, being first duly sworn on oath deposes and says that he is one of the attorneys for the Plaintiff in the above entitled cause;

Affiant states that the subject matter of the dispute involves the right of Plaintiff to exhibit a movie entitled "The Game of Love" in the City of Chicago;

Affiant states that Plaintiff has expended large sums of money in National publicity respecting the exhibition of this film and that unless the controversy is settled soon, the timeliness of the film and the value of the publicity would be lost to Plaintiff;

Affiant states that the film has received reviews in National periodicals and other publications which heighten its drawing power if the film is exhibited within a reasonable time after such reviews appeared;

Affiant further states that the Associate Counsel in the above entitled cause, Mr. Felix Bilgrey, is a member of the

New York Bar and practices in New York City and that the exigencies of his practice make it difficult for him to arrange his schedule unless the above cause is set for a date certain.

Further affiant sayeth not.

Abner J. Mikva

Subscribed and sworn to before me this 7th day of September, A. D. 1955.

E. L. Flynn,
Notary Public.

(Seal)

23 And on the same day to wit, on the 12th day of September, 1955 being one of the days of the regular September term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable J. Sam Perry District Judge, appears the following entry, to wit:

24 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—55-C-1006) * *

This cause coming on for hearing on the plaintiff's motion to set this cause for trial on a date certain come the parties by their counsel and it is

Ordered that this cause be and the same hereby is referred to Master in Chancery David Shipman, Esquire, to take evidence and file his report with the Court.

24½ And afterwards, to wit, on the 3rd day of October, 1955, being one of the days of the regular October term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable J. Sam Perry District Judge, appears the following entry, to wit:

24½ IN THE UNITED STATES DISTRICT COURT.
* * (Caption—55-C-1006) * *

ORDER.

This cause coming on to be heard on motion of Plaintiff, pursuant to agreement with defendants,

It Is Ordered, that the order of reference heretofore entered on September 12, 1955 be amended to read that the cause be referred to Master David Shipman for further proceedings, including trial, and to report his findings of fact and conclusions of law and recommendations, if any, to this Court.

Enter:

J. S. Perry,
Judge.

Dated: October 3, 1955.

Agreed to:
Abner J. Mikva,
Attorney for Plaintiff,
John C. Melaniphy,
Attorney for Defendants,
By E. R. Hartigan,
Asst. Corporation Counsel.

25 And on the same day to wit, the 31st day of January, 1956 there was filed in the Clerk's office of said Court a certain Transcript of Proceedings Had Before The Honorable David J. Shipman, Master In Chancery, together with Plaintiff's Exhibits 1 through 30, inclusive, portions of the transcript of proceedings are in words and figures following, to wit:

* * * * * *

49 Mr. Bilgrey: Mr. Shelton, will you please stand up and be sworn?

(The Master administered the oath to the prospective witness.)

WILLIAM SHELTON, a witness, called on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Bilgrey.

Q. Mr. Shelton, will you please give your residence to the court?

A. Place of residence or business address?

Q. Business.

A. 144 West—

Mr. Hartigan: I didn't get the full name of the witness.

By the Witness:

A. (Continuing.) —Fifty-seventh Street, New York.

By Mr. Bilgrey:

Q. Will you please state your name to the court?

50 A. William Shelton.

Q. What is your position?

A. Vice president of Times Film Corporation.

Q. Now, would you please describe your functions with Times Film Corporation?

A. In charge of distribution.

Q. Are you an officer?

A. Yes.

Q. What function do you hold?

A. Charge of distribution and general sales manager.

The Master: Excuse me. Did we get the address on the record, Mr. Reporter?

The Reporter: Yes, sir.

By Mr. Bilgrey:

Q. Now, will you—will you please state to the court whether Times Film is the firm which has the distribution for the United States for The Game of Love?

A. Yes, they do.

Q. Does it have exclusive distribution?

A. Right.

Q. And now, will you please tell the court how
51 Times Film obtained that distribution?

A. Times Film entered a partnership agreement with William Shelton Firms, who acquired the original American distribution rights from the production company, Franco London Films in Paris; and Times Film is the actual distribution organ that is executing the distribution of this picture in the United States.

Q. In other words, Times Film has the exclusive right to distribute or license for film exhibition or to exhibit the film in question in the City of Chicago, is that right?

A. Yes.

Mr. Bilgrey: I am leading the witness.

Mr. Hartigan: That's all right so far.

By Mr. Bilgrey:

Q. Now, Mr. Shelton, I am going to ask you a few questions about this film.

The Master: Shall it be understood that when we talk about this film, we mean exhibit 1 attached to the complaint?

Mr. Mikva: That is correct.

The Master: Defendants' exhibit 1 offered in evi-
52 dence.

By Mr. Bilgrey:

Q. I am going to ask you to read and identify this and to tell the court what it is (handing a document to the witness).

A. This is a scroll stating that the document, or rather, the picture received a diploma of merit.

Mr. Hartigan: That is objected to. That is objected to, if the Master please.

The Witness: Am I permitted to continue?

Mr. Hartigan: Just a minute.

The Master: Just a moment. Just a moment.

The Witness: Yes.

The Master: Mr. Reporter, will you mark it for identification, please, as plaintiff's exhibit 1?

(The document referred to above was marked "Plaintiff's Exhibit No. 1 for Identification, 10-4-55.")

The Master: Off the record.

(There occurred at this point an informal discussion, outside the record, which, at the direction of the Master, was not taken down by the reporter.)

53

Mr. Mikva: I think the last was an objection to Mr. Shelton's identifying the exhibit.

Mr. Hartigan: The objection, if the Master please, was to Mr. Sheltonham—

The Witness: Shelton.

Mr. Hartigan: Shelton?

Mr. Mikva: S-h-e-l-t-o-n.

Mr. Hartigan (continuing): —speaking of the exhibit, that it was an order of merit that they got from some place.

The Master: He was saying what it shows, not what it purports to show.

Mr. Hartigan: Yes. Then it speaks for itself, if it is admissible.

The Master: It is merely for identification what it purports to show. He can do that.

Mr. Hartigan: Yes.

By Mr. Bilgrey:

Q. Will you please state what it purports to show?

A. It purports to show it is a diploma of merit awarded to the film Ripening Seed. This is the English release

54

title of The Game of Love in England. It was selected for exhibition at the Eighth International Edinburgh Film Festival on August 22 through September 12, 1954. That is all.

Q. Mr. Shelton is the Ripening Seed the same film as The Game of Love?

A. Correct. It is the same identical picture.

Mr. Bilgrey: Master, may I offer this in evidence at this time.

Mr. Hartigan: That is objected to, if the Master please.

The Master: Gentlemen, since this involves, I take it, the same legal principles—

Mr. Mikva: Well, Your Honor—go ahead. I am sorry.

The Master (continuing): —as we discussed off the record here a few moments ago as would be involved on the introduction of other documents, and these literary reviews and so forth, and subject to what you are about to say, I would like to reserve my ruling on this.

Mr. Mikva: I think that this stands on a

• • • • •

61 a look at it?

Mr. Mikva: I am sorry (handing a document to Mr. Hartigan).

May we be off the record?

(There occurred at this point an informal discussion, outside the record, which by direction of counsel, was not taken down by the reporter.)

Mr. Hartigan: Have you offered this in evidence?

Mr. Mikva: Not as yet.

Mr. Hartigan: Not as yet?

All right. Then I will object to it when the time comes.

By Mr. Mikva:

Q. Mr. Shelton, it states on this exhibit 1 for identification that the film Ripening Seed, which you have testified is the identical film to that of The Game of Love—

A. I know so.

62 Q. (Continuing): —was selected at the Eighth Annual Film Festival?

A. Yes.

Q. What is the Edinburgh Film Festival?

A. It is an internationally recognized body established to view pictures submitted by any country which desires to send their choice to these festivals.

It works that every country is sort of governed by a motion picture society, like we have in America: MPA, the Motion Pictures Producers Association.

They have an identical motion picture association in every country. There is one in France called Cinematographique Society, which is also an established body of members, of which are distinguished writers and journalists.

Mr. Hartigan: Now, if the Master please, the witness seems to be wandering away from this exhibit to France.

Mr. Mikva: I think the witness is just attempting to ex-

plain how films get exhibited at the Edinburgh Film
63 Festival.

The Witness: It could be any other country than France.

Mr. Hartigan: I want to note: My objection goes to the relevancy of this testimony.

The Master: Do you want to make a little note of this so that you can be sure that it is in the record when we are considering your objection?

By Mr. Mikva:

Q. Mr. Shelton—

The Master: Excuse me, Mr. Mikva. Are you qualifying Mr. Shelton as an expert on this?

Mr. Mikva: Yes.

The Master: All right. Go ahead.

By Mr. Mikva:

Q. How long have you been in the film industry?

A. All my life. Since I am—

Q. Approximately how many years?

A. Since— Well, I am now thirty-six. I am in this business since I am eighteen.

Q. About eighteen years, is that correct?

A. Yes.

Q. And you have always been associated with
64 either the production or the distribution end of the film industry, is that correct?

A. I have worked for RKO in Europe, and for Columbia Pictures.

I worked for distributors and producers—distribution over here and over there.

Q. And during that period how long has the Edinburgh Film Festival been going?

A. It is now about in its eighth year.

Q. Eighth year?

A. Yes.

Q. And do I understand that they take so many films from each country or one film from each country?

A. It is a practice, one or two pictures are being selected by each country.

Q. And those are then exhibited at the Film Festival?

A. Correct.

Q. Now, of all those pictures that are exhibited, how many are awarded a diploma of merit? To all of them or to some of them?

Mr. Hartigan: I object to any of this testimony,
65 if the Court pleases. The questions are leading, for one objection, that he is asking the witness. All of them are objected to. He is asking the witness if some of them are awarded this award of merit.

Mr. Mikva: I will rephrase the question and put it this way.

By Mr. Mikva:

Q. Over the period since the inception of the Edinburgh Film Festival, have you ever been at the Edinburgh Film Festival?

A. No.

Q. You have not?

Have you followed the proceedings of the Edinburg Film Festival over the years, Mr. Shelton?

A. There are only three big festivals in Europe:

In Venice. In Cannes. Venice in Italy; Cannes is in France.

And in England is at Edinburgh. There are only three. There are many others, but we don't bother with them.

66 Q. Those are the ones that are considered in the industry?

A. Those that enjoy standing.

Q. Those that enjoy standing?

A. Yes.

Q. Now, do you know how many of these films that are exhibited at the Edinburgh Film Festival are awarded a diploma of merit?

A. No. This, I don't.

Q. You don't?

Do you know if during the year 1954 if any other French films were exhibited at the Edinburgh Film Festival?

A. I know of no other French picture that got a diploma of merit.

Q. This is the only French picture that got the award or diploma of merit?

Mr. Hartigan: I object to that. I object to that. I object to this line of questions. It is not fair. He is just putting into the witness' mouth what he has just answered, if it is the only film that was considered there and so on. He said he never attended the proceedings there. How

99 WILLIAM SHELTON, a witness, called on behalf of the plaintiff, having been previously duly sworn, resumed the witness stand, was examined and testified further as follows:

Cross-Examination by Mr. Hartigan.

Q. Mr. Shelton, referring to the plaintiff's exhibit 2 for identification, which is the French letter—

A. Yes.

Q. —(handing a document to the witness), now from whom—to whom was that letter addressed?

A. To Franco London Film, the producer.

Q. The producer, the original producer of this film?

A. Correct.

Q. And who is the party who sent it? I mean, what is the name of the concern?

A. The president of Franco London Film sent it to me by mail. His name is Deutschmeister, Henry Deutschmeister.

100 Q. And the letter is from this French society? What is the name of it.

A. Societe D'Encouragement A L'Art Et A L'Industrie.

Q. What does that mean in English?

A. Society For The Encouragement Of Art And Industry.

Q. The Society For The Encouragement Of Art And Industry?

A. Yes.

Q. I presume that this picture had been exhibited to the parties who viewed the picture for the Society of Art and Industry?

A. Correct.

Q. Were you present at that showing of the picture?

A. No.

Q. Were you present—were you in Paris at the time that this award was made?

A. No. I was in New York.

Q. Do you know who was on the board or the jury, whatever it is, that made up the board or jury, yourself?

101 A. What is the difference between board or jury?

Q. Well, how is it made? Tell me that, if you know.

A. Well, this society is composed of several members.

Q. Yes.

A. You can call them a board or jury, and they are people selected by the industry, by the intellectual background. That is about all.

Q. This particular society that made this award is composed of men or women who are members of the industry, the moving picture industry?

A. Not necessarily members of the industry. They could also be members of any of the literary fields, philosophers or writers, people who enjoy a cultural or intellectual standing in France.

Q. I see. Do you know who they were?

A. I don't know them personally. I don't even know their names.

Q. You don't know the names of the people who saw this picture and made this award?

A. Correct.

102 Q. It is your opinion or your presumption that they were people of letters or artistic people or people of culture? That is right, too?

A. It is not my prediction. It is by established procedure. I don't know whether the festivals are in existence fifteen years or twenty years. But I am only about fifteen or seventeen years active. Since I am active, the festivals in Venice or Cannes of this particular society is established, and the members of the board, they do change; but it is common knowledge that whoever the members are that they are individuals who enjoy prestige, and are not connected with financially with this operation at all.

Q. Well, that is, you don't know that of your own personal knowledge?

A. Oh, I do know that.

Q. Well, how did you get any of this personal knowledge?

A. Well, I lived in France several years, and I have been associated with the people in the industry while I am there day and night. I know this can't be anything
103 else but the official, authentic society. It would be common knowledge in the industry, and this is accepted that they award the Grand Prix Du Cinema Francais. This is beyond me to dispute.

Q. You say you were there in 1954. You were in New York?

A. No. I was in 1953 in France.
Q. All right.
A. And when this award was given, it is the same society; they give it every year.
Q. Well, were you in New York when this award was given?
A. Correct.
Q. And you were not in Paris?
A. That's right.
Q. You don't know who were the members of the awarding board or jury, whatever you might call them?
Mr. Mikva: Your Honor—

By the Witness:

A. Well—
The Master: Just a moment.
Mr. Hartigan: Just a moment.
104 Mr. Mikva (continuing): —don't want to restrict the corporation counsel, but I think he has made the point. This set of questions has been repetition of the questions that he just asked at the beginning.
The Master: All that may be true. But considering the latitude that you enjoyed—
Mr. Hartigan: Subject, of course, to Your Honor's ruling.
The Master (continuing): —and considering also that this man is not speaking in his native tongue, and he might not—
Mr. Mikva: Well, I let it go to the second round, but this was the third round that he was on.
The Witness: Perhaps I can clarify my position. While I was in New York and not in Paris, the same thing holds true for the Hollywood Oscar.

By Mr. Hartigan:

Q. Mr. Shelton, will you please confine yourself to this industry, or rather, the Society For The Encouragement Of Art And Industry? Will you confine yourself to that, please?
A. Certainly.
105 Q. Now, go ahead and say what you want if it is confined to this.
A. No. It was a parallel situation I tried to point out.
Q. I see. Well, in effect, what does this letter say?
A. The picture has been chosen for artistic recognition.

Q. Was there a plaque in connection with it?
A. Yes.
Q. What does it say about the plaque (handing a document to the witness)?
A. That the plaque will be given—the official plaque of the association will be given to the person designated at the Ministry of Commerce in the week of June 14, when it will be officially awarded.
Q. Does it say in the letter what the prize was given for or the plaque was given for?
A. Yes.
Q. Or was awarded for?
A. Yes. It says:
"We have the honor to confer—confirm that your 106 film Le Ble En Herbe," which is The Game Of Love,
"has obtained yesterday the Grand Prix Du Cinema Francais, 1954."
Q. That is all it says?
A. Yes.
Q. There is no mention in that letter as to why or what the basis of that award was, is there?
A. The letter says:
"We have advised the director of the picture and Madame Colette," and the date.
And it is submitted in the name of the jury. That is all it says.
Q. Now, Mr. Shelton, turning to the plaintiff's exhibit 1 for identification, the diploma of merit from the Edinburgh Film Festival: Now, where is that film festival held?
A. That is in Scotland.
Q. And this exhibit purports to be a diploma of merit awarded to the film Ripening Seed.
A. That is the English release title; it is called the 107 Ripening Seed.
Q. The Ripening Seed?
A. Yes. We call it The Game Of Love here.
Q. You were not in Edinburgh at the time of this festival, were you?
A. No, sir.
Q. In fact, you said this morning you were not. You never were in Edinburgh?
A. That is correct.
Q. Can you say, Mr. Shelton, as to whether or not this

film Ripening Seed is the same film that is attached to plaintiff's complaint as exhibit 1?

A. I can take an oath.

Q. What?

A. I mean, that is an oath to this.

The Master: Do you understand that you are under oath for anything you say?

The Witness: Yes.

This is identical: the Ripening Seed and The Game Of Love; it is the same picture.

By Mr. Hartigan:

Q. But you don't know exactly what was shown over there in Edinburgh under the title of Ripening Seed
108 because you never saw it?

A. This is not correct, sir. The picture, the French picture, called Le Ble En Herbe, which was released in England under the title Ripening Seed, in America, The Game Of Love, it is the same thing. I haven't seen it in Edinburgh, but I know they would not lie to me.

Q. But you are basing your testimony on what somebody has told you about that, is that right?

A. They have written me a letter.

Q. A letter or something else?

A. Yes.

Of course, Franco London is one of the largest distribution companies in France.

Q. I don't know anything about it; I will have to be dependent upon you to advise me.

A. They do every year about five or six important pictures.

Q. Now, have you knowledge or information as to the basis of this award of the Society of Art and Industry from France?

A. Yes.

Q. What is that?

109 A. Well, they try to choose pictures, they do, through interpretation of the members of this society, and obtain the highest taste of interpretation and standards.

The Master: Excuse me. What was that last?

The Witness: Standards. Standards of what is the spirit of artistic merit.

By Mr. Hartigan:

Q. I think you spoke this morning of the highest moral, cultural and intellectual?

A. Yes, sir; yes, sir.

Mr. Mikva: Merit.

By Mr. Hartigan:

Q. That is what you would include in that?

A. Yes, sir.

Q. That, in your opinion, is what was considered by this Society for the Encouragement of Art and Industry, and also the Edinburgh Film Festival?

A. Both societies. This English is a gathering of people of the highest principles.

Q. That is your judgment?

A. It is not my judgment. It is the judgment of
110 the world.

Q. The world?

A. Of common knowledge.

Q. Yes. Now, there is nothing in this diploma of merit to show the basis of what was in the minds of the Festival when they awarded this diploma of merit?

A. That is correct.

Q. Isn't it? That is not on the face of it?

A. That is right. It does not go into details.

Q. I think your counsel asked you concerning the number of places this film was exhibited?

A. Yes.

Q. And you said somewhere around one hundred and fifty?

A. Between one hundred and fifty and one hundred and seventy-five.

Q. Now, will you enlarge on that and tell us what you mean? Do you mean one hundred and fifty or one hundred and seventy-five towns or cities?

A. Yes.

Q. In the United States?

111 A. Yes.

Q. Can you name some of them?

A. Yes. Those towns that have played the picture and already are playing it right now are:

Pittsburgh, Boston, Washington, D. C., Providence, Rochester, Philadelphia, Denver, Cleveland, Kansas City, Baltimore, San Antonio, Texas, Miami, Houston, Texas, Los Angeles, San Francisco, Dallas, Minneapolis, St. Louis.

Those are the big towns. There are many small
112 ones. I don't have the records with me, but those are the key towns.

Q. The key towns?

A. Yes.

Q. Is that all of the large cities?

A. No. There are many more, but I just—

Q. How many more large cities?

A. Well—

Q. Can you name any more large cities than those you have already named?

A. Well, those are the big, principal large cities. Those are the big populations. Some of them have four million population, like Los Angeles, and others may only have one million, like Philadelphia.

I am not too familiar with the exact population, but those are the bulk of the large cities throughout the United States where we played this picture.

Q. But you would not say that those are all the large cities?

A. No. There are more I could give in a brief later on, a complete statement.

113 Q. I see. I see. All right.

Now, you testified in response to your counsel's questions this morning that you had read this book?

A. That's right.

Q. And you said that the film, which is attached to your complaint here, plaintiff's complaint, is a faithful delineation of the book in spirit?

A. Correct.

Q. Now, what do you mean by that?

A. Well, this is a question. Madame Colette herself spent a great deal of time, and I knew how she felt about this book, because she spoke to me a great deal about it.

Do you see, I was connected also with the previous picture, which was directed by the same man who did The Game of Love, which was The Devil in the Flesh, and I was solely responsible for her agreeing that this director was chosen because she admired his integrity, and therefore it was the basis of the agreement.

She did not care for money because this book, this film was to be done as faithfully as possible, and since M.
114 Claude Autant-Lara was the director and since he enjoys a very eminent position in the artistic world, in France, and also in Hollywood.

As a matter of fact, he has left Hollywood because he was not happy. He is a man who doesn't care for money. So they couldn't buy him. He is a man who has great principles. This is the reason that Madame Colette agreed to accept him as director.

Q. Well, how about the film being a faithful delineation of the book?

A. Well, I think they have done a wonderful job, and this opinion is not shared by myself because I am not an expert on cultural subjects, but my eyes can see, and I can feel that they have done a wonderful job to translate it faithfully.

Q. Well, you referred to this book as a modern classic?

A. It is considered a modern classic.

Q. Who considers it a modern classic?

A. Well, it is in public libraries. They don't put books in public libraries of people who are dead.

115 Q. And therefore, it being in public libraries you give it the appellation or name of modern classic?

A. This is not the only reason. Madame Colette died; France, the State of Français gave her a state funeral. They wanted to honor her because she is considered one of the greatest writers that France ever brought out, and such an honor is only accorded—to my knowledge I don't remember any other writer in my time who was accorded such an honor.

Q. That is why you dub it or term it as a modern classic?

A. Not I. This is also the opinion of all those people who have literary or cinematographic admiration for those who are considered great writers. That is my opinion: she is a great writer.

Q. That is what I say: it is your opinion that it is a modern classic?

A. No. It is considered a modern classic.

Q. Well, considered by whom as a modern classic?

A. Well, by certain literary or philosophical cir-
116 cles, people who are teachers or people who like to read her books.

Q. Well, can you name some of them that considered it a modern classic—some important literary people?

A. Certainly. I would say an English writer, Hemingway or Steinbeck. They enjoy a big reputation.

I can give you Oscar Wilde, or I would say some considered as modern classics, that is, they are dead people

of that league—Dostoyevski. I mean that they are in the same league as philosophers who enjoy a great reputation.

Q. Am I to understand from you that the literary men that you named denominated this book by Colette a modern classic?

A. They have not because some of those people are dead, of those writers that I mentioned.

Q. What did you mean to say?

A. I considered the work of those writers in the same league.

Q. But they never have voiced an opinion that Madame Colette's work was a modern classic, have they?

117 A. I had not spoke to them; I couldn't tell you.

The Master: I don't think the witness understood your question.

Mr. Hartigan: Well, I am sorry. I think he understands it now, don't you?

By Mr. Hartigan:

Q. What I am trying to get at, Mr. Witness, is by what authority do you say that this is a modern classic?

A. Well, it is the same as I consider Abraham Lincoln a great president. By what authorities? It is my feeling. That is my opinion.

Q. It is your feeling. That is what I wanted to get to. Now, you read this book?

A. Yes.

Q. And you saw the film?

A. Yes.

Q. And you feel that the awards that were given here that you have, these exhibits No. 1 for identification and No. 2, were given for the very high moral and cultural and intellectual considerations?

118 A. Yes.

Q. Now, will you tell me, tell me what the theme of the story is in this play Game of Love?

A. It is the story of two youngsters who knew each other all their life.

Q. About what age would you say they are from the book or the book?

A. About ten to twelve years. They were children, and they were—they spent the summer together in the same resort in the summer. This is on the beach.

Q. On vacation?

A. On vacation, yes.

And the families were very close. They even shared the same boarding house. They lived together in that particular period; when they are about reaching the age of fifteen and sixteen they—

The Master: This is off the record while I answer the phone.

(A brief intermission.)

The Master: There are a couple of gentlemen from the newspapers. Is there any objection to letting them
119 come in?

Mr. Hartigan: No, I have no objection.

The Master: This is off the record.

(There occurred at this point an informal discussion, outside the record, which, at the direction of the Master, was not taken down by the reporter.)

The Master: Now I would like the record to show the presence of Mr. Black.

Mr. Block: Block: B-l-o-c-k.

The Master: He is a newspaper reporter. He wasn't invited, but he is welcome here. I understand that neither counsel has any objection to his being here.

Off the record again, Mr. Reporter.

(There occurred at this point an informal discussion, outside the record, which, at the direction of the Master, was not taken down by the reporter.)

120 The Master: Are you ready to go back on, gentlemen?

Mr. Hartigan: Yes, Your Honor.

Would you read the last question, Mr. Reporter?

(The reporter read the last question and answer.)

By Mr. Hartigan:

Q. Now, could I interrupt for just one question? The scene of the story is laid in France, I presume?

A. No. Breton.

Q. And the characters are all French people?

A. Yes.

Q. All right. Go ahead now.

A. The story is trying to depict the awakening and transition of youngsters into adults, the adolescent period, and the innocence.

Q. In both the male and the female?

A. Yes.

And there is one short role in the picture, which is an

important one. There is a more mature woman in the picture, who is entering the plot.

121 Q. Who is what?

A. Entering the situation; entering the story.

Q. Entering the story?

A. Yes.

It is hearsay that this mature woman was Colette. She has never admitted it.

But the story develops then where the young boy has an interest in the mature woman.

Q. A sexual interest in the mature woman, wouldn't you say, from the picture?

A. Well, I don't know whether it is a sexual interest. There is a relationship later on established in the book between the two, yes.

Q. A sexual interest?

A. Yes. I mean, it is not demonstrated, except it is indicated—

Q. Yes.

A. (continuing): —like when, like in most other pictures or books.

And since this was a very brief relationship, the boy, he winds up following his true ideals, and he leaves this relationship; it has not sustained itself; and he follows his

122 true affections, and he and this little girl have sort of become good friends again.

Q. Isn't there a suggestion of sexual relations there, too?

A. No.

Q. No?

A. It is not indicated. This could be interpreted either way. It has never been established in dialogue nor visually.

Q. But the boy and girl repose; the boy and girl retired to a straw-heap, isn't that so, in the film?

A. In the kissing scene. Yes, there is one kissing scene.

Q. Then they return back into the house after some absence?

A. After the kissing scene they return to the house, and there is normal dialogue, and the picture ends up with the sadness, because with the passing of the summer it seems to be the passing of those years which all of us all experienced once when we were sixteen; and this is about the

123 conclusion. It is left open. At no time has it indicated anything suggestive.

Q. Mr. Shelton, may I ask you, what is there of an artistic nature in that story, or what is there of a cultural nature in that story? Will you tell us?

A. This is hard for me to answer because I am not an expert on cultural matters. It is hard for me. I only can give you the reaction of the world who considered it in such a way.

It was treated the way the story was told that it has won the admiration because it was true to life. It was in good taste. It was handled with sensitivity, with nicety, and as such it was accepted as a beautiful poetic work of art.

Q. Well, what is there in the picture that prompts you to say that it was a work of art?

A. I wouldn't say. I only quote American publications like in Los Angeles, we had the Los Angeles Times, or we had the New York Times in New York, or we have dozens of other papers who are on record.

Q. Which say that the film is artistic?

124 A. Who are unbiased papers; accepted by the American press.

Q. Now, what is there about the picture that would be intellectual?

A. Well, I think this is a picture which has an appeal because of its honesty. There is not much action. It has beautiful dialogue. It is establishing a mood, like poetry.

Q. All right. O.K.

You say that it does not have much action. Is that what you said?

A. No. And it would be considered by American standards a slow motion picture. There is a great deal of dialogue establishing a mood, and that is all it is. This picture is like poetry.

It is not a picture which I could play in regular American theatres. Those pictures were only being shown in art theatres.

Q. Practically the whole theme of it is sex, isn't it?

A. No. It is life.

Q. Well, you can term it life. I saw the picture.

125 I would say it is sex.

A. Sex is a part of life, too.

Q. That's right.

A. Without that there would be no theatre, no literature; there would be no music.

Q. May be.

But that was the theme of the picture, and I saw it?

A. Well, it is a part of life.

Mr. Mikva: Your Honor, I have no desire to cut off this examination, but I would like to protect our record. We have not endeavored to pose Mr. Shelton as an expert on sex or literature or art or music. We didn't put him up here as an expert on those subjects; we would not be so presumptuous.

Mr. Hartigan: Well, he spoke of different things of which I inquired on his presumption.

Mr. Mikva: I say, I have no objection to your examining him.

Mr. Hartigan: Well, all right, Mr. Mikva.

The Master: We don't want this examination to qualify him as an expert.

126 Mr. Mikva: That's right.

The Master: Unless it happens.

Mr. Mikva: Unless it happens.

I say that wasn't the basis that we put him up, as an expert. We put him up as an expert in the motion picture industry.

The Master: Mr. Reporter, can you hear all this?

The Reporter: Yes, sir.

Mr. Hartigan: I think that is all, if the Master please.

The Master: This is off the record.

(There occurred at this point an informal discussion, outside the record, which, at the direction of the Master, was not taken down by the reporter.)

* * * * * *

Mr. Mikva: As I understand it, are you planning to leave tonight, Mr. Shelton? Are you planning to leave tonight?

The Witness: I have plans to leave tonight.

* * * * * *

129 (A recess was taken.)

Mr. Mikva: Could the record show that Lt. Sheehan has been sworn by the Master?

IGNATIUS J. SHEEHAN, a witness, called on behalf of the plaintiff, having been previously duly sworn, was examined and testified as follows:

Direct Examination by Mr. Mikva.

Q. Would you state your name for the record, please?
A. Ignatius J. Sheehan: S-h-e-e-h-a-n.
Q. And where do you live, sir?
A. 1758 East Seventy-third Place.
Q. What is your occupation?
A. Lieutenant of police.
Q. For the City of Chicago?
A. City of Chicago.
Q. How long have you been a lieutenant of police, sir?
A. Twelve years.
Q. Are you connected with what is known as the
130 censorship unit of the police department of the City of Chicago?
A. Yes, sir.
Q. And what is your connection with that unit?
A. Well, I am commanding officer of the censor unit.
Q. And how long have you held that office?
A. Since July, 1952.
Q. Since July, 1952?
A. Yes.
Q. Now, can you tell the Master and the Court what functions that unit serves? First of all, is it under the jurisdiction of the police department?
A. Yes, sir.
Q. And who is your superior?
A. Commissioner of police.
Q. Timothy O'Connor, is that correct?
A. Yes, sir.
Q. The same Timothy O'Connor that is one of the defendants in this case?
A. Yes, sir.
Q. And what are your functions?
131 A. Well, the censorship of motion pictures are all my functions. I have a number of other duties besides the motion pictures censor.
Q. Well, let us for the time being confine it to motion pictures.
A. Just confining ourselves to motion pictures: well, I

would be what you would call the guide for the board. They guide me in their decisions to each picture that they see.

Q. You refer to the board. What board are you speaking of?

A. The censor board consisting of six members.

Q. Are they employees of the police department? Are they police officers?

A. No, but they are employed by the police department. They are under the supervision of the police department.

Q. Who appoints them? It is appointive or elective?

A. It is appointive. Whether it is the mayor—I presume it is the mayor that appoints them.

Q. And these six people are known as the censor board, is that correct?

132 A. Yes, sir.

Q. Are they superior to you or under you?

A. They come under my command.

Q. I see. Now, what do they do?

A. Well, they screen and judge each picture that is sent in for a permit to be run in the City of Chicago.

Q. Do you also screen them, Lieutenant?

A. Very seldom, unless I am called on in the case where they ask for a review. I don't screen pictures.

Q. Now, in the normal course of events, then, as I understand it, someone applies for a permit to exhibit a motion picture in Chicago, is that correct?

A. Yes.

Q. It is your understanding of the ordinance that no one can show a motion picture publicly without obtaining such a permit?

A. That is correct.

Q. They submit the film to your office?

A. Yes, sir.

133 Q. With a request for a permit, is that correct?

A. Yes; well to be screened for a permit, yes.

Q. Then does the censor board then screen the movie?

A. That is correct.

Q. Following the screening, what do they do, that is, the censor board?

A. Well, they make their recommendations.

Q. To you?

A. Yes, sir.

Q. Are they in writing, or do they—

A. They make out a card.

Q. (continuing): —each one of them individually?

A. No. They have a card. It is about eight inches long and about four inches wide. On there they will put a little synopsis of the picture; then how they vote, and the name of the picture, and what they—their votes as to what—

Q. As to whether a permit should issue or not?

A. Yes, sir.

Q. Do they make comments on the motion picture on this card; or do they just vote yes or no?

134 A. At times they do. There is times where there would be a picture where I think a cut could be made in the picture, and the picture is all right.

Q. When you say a cut, do you mean cut on the film should be taken?

A. An elimination of a certain part of the film.

Q. And they make that comment on the card?

A. Them people ask for that cut.

Q. Now, in the normal case, then, if they deny, or if they vote to deny a permit, do all six see every movie, or do they take it in panels?

A. No. All six see the same movie.

Q. All six see the same movie?

Assume that all six vote to deny a permit on this card, in case they voted to deny it, you then issue a letter to the applicant denying the permit, is that correct? Or what would happen at that point? Do you do anything more?

A. (There was no response.)

Mr. Mikva: May the record show that I am calling
135 this witness pursuant to Rule 43 (b), under the Civil Rules of Procedure, as an officer of a public corporation, who is adverse to the interests of the plaintiff in this case.

I do not intend to bind myself. I am not calling him as my witness.

By Mr. Mikva:

Q. They hand this card to you, then, is that correct?

A. They do. I come out and I look at it.

Mr. Hartigan: Mr. Mikva, may I interpose here? This is off the record.

(There occurred at this point an informal discussion, outside the record, which at the direction of counsel, was not taken down by the reporter.)

• • • • •

By Mr. Mikva:

Q. Perhaps, Lt. Sheehan, if you described this card in a little more detail it might clarify it a little bit. The
136 card has a name, a place for the name of the picture, as I understand it?

A. At the top of the card you have the name; firm, we will say United Artists or Metro-Goldwyn-Mayer.

Q. Or the producer?

A. Yes. The name of the picture.

Q. Yes.

A. And the footage, the time, and then there is a little place for synopsis, what the story—The Game of Love, and then over on the reverse side there is a place where they vote to either reject or accept.

Now, all six could reject or accept the picture.

Q. Are there six separate lines on the reverse side?

A. Oh, yes, a place where each sign on there on the back.

Q. Sign there on the back, check a box or something to accept or reject, is that it?

A. Well, they have two lines in between. If it is approved on this side; if it is reject, it is on this side.

Q. And they sign their name on each side that
137 votes?

A. Yes.

Q. You mentioned that on the front side there is a synopsis. Who makes that synopsis of the movie, one of the censors?

A. Yes, one of the censors fills out the whole card; each one takes turns.

Q. Each one takes turns filling out a card?

A. Yes.

Q. What is the name of the head of the censors?

A. No. They are all individuals.

Q. I see.

Now, after that card is filled out, take the case where the film has been rejected; all six of them vote to reject, then what happens to that card? Is it turned over to you?

A. Yes.

Q. Then what do you do following that?

A. We notify whoever sends the picture in that it is rejected or accepted, whatever the case may be.

Q. You send them a letter to that effect normally, or do you call them?

138 A. Not in the ordinary case. We notify whoever sends the picture in. We usually send them in through a distributor in Chicago here.

Q. Then you notify the distributor by phone?

A. That's right, or they call up.

Q. Or they call up and ask what the situation is?

A. Yes.

Q. And you tell them it has been accepted or rejected?

A. Or rejected.

Q. And then, am I correct in saying that in the normal course of events you would not screen the picture officially, even though you may see it, you accept the censors' determination in the first instance, is that correct?

A. Yes, sir.

Q. Suppose the censors are divided; suppose four are for the picture and two of them are against it. Will you take the majority vote or what?

A. Usually take the majority vote.

Q. Suppose they are equally divided, has that situation ever arisen, where three vote to accept and three to reject?

139 A. No. If there were an even vote on it, we would hand it back and tell them to see it over. I would sit in and vote.

Q. Now, suppose a picture is rejected, you call up the exhibitor or the exhibitor calls you up; you tell him that it has been rejected, and he registers some complaint. Do you then view the picture then yourself?

A. Ordinarily the commissioner—they will send a letter to the commissioner of police, and he will send me a letter, telling me to re-review the picture.

Q. Do you do the running or does the censor board see it?

A. No. I see it with the board.

Q. If they vote against—

A. If they vote against?

Q. (continuing): —do you then vote at that point?

A. No. I usually give—

Q. —your ideas?

A. (continuing): —my ideas the way things—I don't vote.

140 Q. Do you consider yourself bound by what the censor board does? In other words, do you feel that it is your job to overrule them if you think they are wrong?

A. Oh, if I thought that they were wrong, I would so state to the commissioner in my report.

Q. Have you ever overruled them on any picture since you have been the commanding officer of the censor unit?

A. Yes, I think I have.

Q. Do you remember the name of the picture involved? It is not too important.

A. No, no, I don't.

Q. Could you name the censors, their names and address?

A. At the time your picture was screened?

Q. Yes.

A. Or now?

Q. Yes, I think that is the time in issue. Have there been any changes in the censor board?

A. We started with Ida Fishman.

Josephine O'Hallaren.

141 I am trying to think of Mrs. McGill's first name. Her name is McGill: M-c-G-i-l-l.

Edith Joyce.

William Zimmerman.

And Mrs. Jorgenson.

Q. Now, have there been any changes in the personnel of the censor board since that time?

A. Yes, once.

Q. Which of the six?

A. William Zimmerman was replaced by William Lyons.

Q. Now, you don't appoint these people, is that correct?

A. No, sir.

Q. Do you know who pays them?

A. (There was no response.)

Q. Are they paid? First of all, do they receive compensation for their work?

A. Yes, sir.

Q. Do you know who pays them?

A. The City of Chicago.

Q. Is there an appropriation in the budget for your unit, as far as you know?

Mr. Hartigan: I object to that.

142 By Mr. Mikva:

Q. If you know; if you know.

Mr. Hartigan: That is going a little too far, I think.

Mr. Mikva: Well, if the Master please—

Mr. Hartigan: What difference does it make?

Mr. Mikva (continuing): —there is a great concern about whether the ordinance is being carried out by the present setup.

The Master: Do you intend to connect this thing up?

Mr. Mikva: Yes.

The Master: To show relevancy?

Mr. Mikva: I will be glad to show it right now. The ordinance calls for the police commissioner to make this determination.

Now we learn that in making a determination, the police commissioner has delegated to Lt. Sheehan, and which he has in turn delegated to the censor board, which is not contemplated in the ordinance.

Will you read the last question, please, Mr. Reporter?

143 (The reporter read the pending question as follows:)

"Question. Is there an appropriation in the budget for your unit, as far as you know?".

By The Witness:

A. Yes, sir.

By Mr. Mikva:

Q. Do you know who established the censor board?

A. It was established under an ordinance of the City Council.

Q. Are you referring to Sections 1 through 7 of Chapter 155 of the Municipal Code? Is that the ordinance that you are referring to (handing a document to the witness)?

A. Yes, sir.

Q. Would you examine that ordinance and tell the court where it refers to a censor board?

A. I don't—

Mr. Hartigan: Well, that speaks for itself, if the Master please. The ordinance is there.

The Master: Of course, it speaks for itself, in a 144 sense. We are lawyers, and we can read the ordinance.

Well, I think the question goes to another purpose.

Mr. Mikva: That is correct.

By Mr. Mikva:

Q. The question is: Who is the source of authority for the censor?

A. If I am not mistaken, it gives the commissioner of police the power to delegate his authority to censor pictures.

Q. I understand we are not trying to put you in the position of a lawyer. But is this the language you referred to up here (indicating)? I am pointing now to Section 155-3 of the Municipal Ordinance.

The Master: Let us go off the record for a moment, Mr. Mikva.

(There occurred at this point an informal discussion, outside the record, which, at the direction of the Master, was not taken down by the reporter.)

• • • • •

145 Mr. Mikva: I will withdraw that question.

And I understand that the corporation counsel will attempt to furnish me by tomorrow with what they view as authority for the functioning of this censor board in the ordinance.

The Witness: I think that Lt. Kafka had that, Mr. Hartigan, in those other hearings we had where we got our authority.

By Mr. Mikva:

Q. How often does this censor board view pictures? Are they working almost every day?

A. Five days a week.

Q. Five days a week?

A. Yes.

Q. You had occasion to become familiar with the people who comprise the censor board? Do you know them?

A. Just as working with them.

Q. Are you aware of whether they are required to have any special qualifications to be appointed to this censorship board?

A. No, sir.

Q. Are any of them writers, do you know?

146 A. Not that I know of.

Q. Are any of them school teachers?

A. I wouldn't know.

Q. Are any of them recognized in other forms of art, such as, are any of them artists who have painted or performed on the stage?

A. I wouldn't know.

Q. Are any of them that you know of—do any of them have any special literary qualifications?

A. I wouldn't know.

Q. Have they ever been drama critics?

A. No, sir.

Q. Or ever written book reviews?
A. I wouldn't know.
Q. Lt. Sheehan, calling your attention to the thirty-first day of May, 1955—
Mr. Mikva: Strike that.

By Mr. Mikva:

Q. Calling your attention to the sixth day of May, 1955, did you or the censor board have occasion to view a film entitled The Game of Love?

A. Yes, we ran, whatever date you would say. I
147 would say we did, yes.

Q. Let me show you this letter. This might refresh your recollection a little bit (handing a document to the witness).

The Master: Off the record.

(There occurred at this point an informal discussion, outside the record, which, at the direction of the Master, was not taken down by the reporter.)

* * * * *

The Master: Mr. Reporter, will you mark that exhibit for identification at this time?

Mr. Mikva: Sure. I just wanted to refresh his recollection on the dates.

Would you mark this as plaintiff's exhibit No. 3 for identification?

(The document referred to above was marked "Plaintiff's Exhibit No. 3 for Identification, October 4, 1955.")

By Mr. Mikva:

148 Q. Who viewed the film on that day, Lieutenant, do you know?

A. Well, that is marked May 31, isn't it?
Q. Yes, the letter is dated May 31, but it states in here that if was viewed on May 6.
A. May 6?
Q. Yes.
A. I thought he said June 6.
Q. No. May 6.
A. May 6.
Q. Did you view it on May 6? I mean, as far as you can recall.
A. I think that was the first time the picture was sent in. I didn't view it.
Q. You did not view it at that point?

A. No, sir.

Q. Now, do you have a record of how the censors voted on this movie when it was first submitted to them? Do you have that card that you were referring to?

A. I don't have it with me.

Q. Is that kept as one of the permanent records?

A. Yes, that is permanent.

149 Q. Could you produce it?

A. Yes.

Q. I would like to ask you to bring it with you tomorrow, or see that it is brought here. I think we would like to examine it.

You did not view it at that time, as far as you can recall?

A. Not the first time the picture was brought in.

The Master: Is that agreeable with you to have that brought in?

Mr. Hartigan: Yes, if he has got it.

The Witness: Could I say something? Would it be all right if I got a photostat? If it is put in the evidence, then I am without a file.

Mr. Hartigan: A photostat, that is all right, Lieutenant.

Mr. Mikva: Yes. We would like both sides of the card.

Mr. Hartigan: Both sides.

The Witness: Yes it will be both sides.

By Mr. Mikva:

Q. Now, calling your attention to what has been 150 identified as plaintiff's exhibit 3 for identification, did you write such a letter or such a memorandum?

A. Yes.

Q. Now, it states in there, in the fourth paragraph:

"The picture was found to be in violation of the ordinances of the City of Chicago in that it is not acceptable to standards of decency, with immorality featured and dialogue unfit."

Where did you obtain that information? Who found that to be true? The censor board or you?

A. Well, I don't know what to say here, whether I had seen the picture at this time or not.

Q. May I ask you this? Do you concur in that language?

A. Yes, sir.

Q. You have seen the film since, I take it?

A. Yes.

Q. You concur with the dialogue as unfit and that im-

morality is featured, standards— and that its standards
151 not acceptable—not acceptable to the standards of decency?

A. (There was no response.)

Q. Would there be an occasion after May 6, between May 6 and May 31, 1955, for you to have viewed the film, if you remember?

The Master: I did not hear the answer to that previous question.

The Witness: I said yes.

By Mr. Mikva:

Q. Would there be an occasion for you to view it between May 6 and May 31, the day that this letter was written?

A. Well, I am sure that I must have. I saw it once; I saw the picture once, when it was sent back for rescreening.

Q. Now if it was sent back for rescreening after May 31—

A. Oh, I see.

Q. (continuing): —could it be possible that this letter was written prior to the time that you had seen it, seen the film?

A. It could be, yes.

Q. You are not sure?

152 A. I am just going by what the censors said.

Q. In other words, you are going by what the censor board said at that time?

A. Yes.

Q. Do you know whether any of the censors speak French?

A. I don't know.

Q. Do you speak French, Lieutenant?

A. No, sir.

Q. Do you know what is meant by the words: "Dialogue unfit"?

Does that refer to the French words that are spoken in the movie, or the English sub-titles? Would you know?

A. I presume it would be to the English.

Mr. Mikva: All right now. I would like to keep this chronological. I would like to offer this in evidence at this time.

Is there any objection?

The Master: What you have handed Mr. Hartigan is not marked.

Mr. Bilgrey: Excuse me. It is the other one.

The Master: You are now handing Mr. Hartigan
153 plaintiff's exhibit 3 for identification?

Mr. Mikva: I am now handing Mr. Hartigan plaintiff's exhibit 3 for identification.

Mr. Hartigan: Let's look at it.

Mr. Mikva: This is off the record.

(There occurred at this point an informal discussion, outside the record, which, at the direction of counsel, was not taken down by the reporter.)

* * * * *

Mr. Hartigan: No, I have no objection as to this.

The Master: Then it may go in.

(The document referred to above, which had heretofore been marked "Plaintiff's Exhibit No. 3 for Identification, October 4, 1955," was received in evidence and marked "PLAINTIFF'S EXHIBIT NO. 3, October 4, 1955.")

Mr. Mikva: Still off the record.

154 (There occurred at this point an informal discussion, outside the record, which, at the direction of counsel, was not taken down by the reporter.)

Mr. Mikva: Mr. Richman, will you please identify these documents chronologically?

(The documents referred to above were marked respectively, "Plaintiff's Exhibits Nos. 4, 5, 6, 7, 8, 9, 10 and 11 for Identification, October 4, 1955.")

Mr. Mikva: Off the record.

(There occurred at this point an informal discussion, outside the record, which, at the direction of counsel, was not taken down by the reporter.)

* * * * *

155 Mr. Hartigan: Note an objection there to exhibit 3. That will fix it. That will be 3, 4, 5, right along.

The Master: I will accept it subject to your objection.

Mr. Hartigan: Yes.

By Mr. Mikva:

Q. Now, Lieutenant, are you able to say at this time whether the language:

"Dialogue unfit and not acceptable to standards of decency, with immorality featured,"

was a result of your having seen the movie at that time,

or was it as a result of having conversed with the censor board?

Mr. Hartigan: Master, I want to note an objection to the testimony by Lt. Sheehan on the ground that it is limited in view of the condition of the pleadings. We admit that it has been denied obscenity finally, and that is this ordinance.

Mr. Mikva: May I ask you this, Mr. Hartigan? Are you willing to admit at this time paragraph 3 of Count
156 I of our complaint?

Mr. Hartigan: Not if it is denied in mine.

Mr. Mikva: It is not denied. Yes, sure.

Mr. Hartigan: It is? I will change that.

Mr. Mikva: If the Court please, there is a square conflict of fact on that one issue as to what was the basis of the denial.

The Master: I think it may be material, and it may go in.

Mr. Mikva: Would you repeat the question, Mr. Reporter?

(The reporter read the pending question to the witness.)

By the Witness:

A. I don't think that I can answer that question without going over my notes and going back and going through my file. I don't recall when I saw the picture.

By Mr. Mikva:

Q. Would your file indicate when you saw it, Lieutenant, or would it refresh your recollection?

A. Yes.

Q. The file?

157 A. Yes.

Q. Would you between now and tomorrow morning examine your file?

A. Surely.

Q. Because at least in the plaintiff's view these things are very relevant.

Now, to your knowledge, did Police Commissioner O'Connor ever see this film?

A. I am trying to think. I remember Mr. Melaniphy being down there. I don't recall whether the commissioner was with him or not.

Q. To your knowledge, did Mayor Daley ever see this film?

A. Not to my knowledge.

Q. Who is Commissioner O'Regan?

A. He is the deputy commissioner of police for staff service.

Q. To your knowledge, did Commissioner O'Regan see the film?

A. Not to my knowledge.

Q. That is Deputy Commissioner O'Regan, the field deputy. I am referring to plaintiff's exhibit 3 in which it states:

158 "From deputy to commissioner."

It is sent from the commanding officer of the censor unit to deputy, to the Commissioner O'Regan. Was that his full title?

A. Yes.

Q. In other words, this letter of May 3 and the memo of May 31 sent from you to Deputy Commissioner O'Regan?

A. That's right.

Q. To your knowledge, he did not see the film, is that correct?

A. No. All my correspondence go through the deputy commissioner for staff service.

Q. And then he in turn would send it to Commissioner O'Connor in the normal course of events?

A. Yes.

Mr. Hartigan: Is that identified?

Mr. Mikva: Yes, that has been admitted as plaintiff's exhibit 3.

By Mr. Mikva:

Q. Following May—at the same time, as I understand it, you viewed the film, is that correct?

159 A. Yes, sir.

Q. Now, did you find the dialogue unfit?

A. I recall it took place—I just can't. I would have to go over my notes. I haven't gone over these at all. I didn't even know that I was going to be called as a witness until Mr. Hartigan told me he may want me, so I didn't have time to be—

Q. I will withdraw that question and ask you that question tomorrow, after you have had a chance to go over your notes.

Now I will ask you a couple of questions about procedure, if you can answer them.

Are there any rules of procedure that the board has,

either written or unwritten—the censor board. For instance, is there a rule that they cannot conduct—discuss a film until after it has concluded?

Or is there a rule or procedure whereby they may stop the procedure and have the board show it over again? What is the operation to that?

A. No. They go over the whole film and sit down and discuss the film.

160 Q. You mentioned that you act as guide?

A. No. They act as guide to me.

Q. Oh, I'm sorry.

Have you ever informed them as to the standards which you desire them to use?

A. Yes, sir.

Q. And what standards have you advised them that you want them to use?

A. Well, follow the City ordinance.

Q. You are referring again to Chapter 155, Sections 1 through 7, is that correct?

A. Yes, sir.

Q. Are they familiar with that ordinance, as far as you know? Have you asked them to read it?

A. Yes, sir, they are all familiar with the ordinance.

Q. And in the course of events is the producer of the film ever called in to explain ambiguities in the film?

A. No, sir.

Q. Is the distributor ever called in?

A. No, sir.

Q. Am I to understand that the procedure is that
161 only these six people are in the room, and perhaps you, at the time the film is shown?

A. Yes.

Q. Does the distributor ever get a chance to present his views on the picture?

A. No, sir.

Q. Are other people's views invited, such as drama critics or movie reviewers or writers or artists of some kind; or are they ever asked to comment on the film before the censor board makes its decision?

A. No, sir.

Q. In other words, it is these six people plus yourself in a relationship that we have not as yet defined who decide whether the picture conforms to the standards set up in the ordinance?

A. Yes, sir.

Q. Whatever those standards mean?
A. (There was no response.)
The Master: The answer?

By the Witness:

A. Yes, sir.

By Mr. Mikva:

162 Q. Now, I hate to keep pressing this, but I think it is important, Lieutenant.

As you understand your function, you have the power to overrule the censor board, is that correct?

A. Well, I wish you would—

Q. I am trying to clarify the question.

A. I can't answer the way you put it.

Q. Suppose they vote to reject the picture, and you review the picture. You decide that there is nothing wrong with that picture. Do you believe it is your function to overrule them and to order a permit issued for the picture?

Mr. Hartigan: Well, if the Master please, I think that is objectionable because it calls upon him to make a decision. As I see his actions in this correspondence that has been submitted here, he referred the matter to the commissioner of police or Deputy Commissioner O'Regan for final decision. So I think it is—

The Master: I have not seen the correspondence
163 you are talking about yet. Notwithstanding the point that you make, and assuming what you say about the correspondence is so, I think that this still touches on another area than that covered by the letter.

And is your objection, Mr. Hartigan, also that that question calls for an answer having to do with the frame of mind of the witness?

Mr. Hartigan: Yes, and also other pictures outside of the present picture, the picture involved here.

Mr. Mikva: If the Court please, I believe I used the word "believe," and that was inadvertent.

The Master: Well, let him rephrase the question.

Mr. Mikva: I will be glad to rephrase it. I don't care for his opinion. I want his explanation of the procedure.

The Master: I wasn't sustaining his objection, but I was just giving Mr. Hartigan an opportunity to enter or state another ground.

Mr. Mikva: I am not interested in his opinion. Let me rephrase the question.

164 The Master: This is off the record.

(There occurred at this point an informal discussion, outside the record, which, at the direction of the Master, was not taken down by the reporter.)

By Mr. Mikva:

Q. Is it your function in an appropriate case to overrule the censorship board in either ordering a permit issued or ordering the film rejected?

A. The only way that I could answer that is, I just give my opinion to the commissioner.

Q. So that in an appropriate case, if you disagreed with the censor board, and they rendered a decision, say, rejecting the film, you would then given an opinion to the commissioner urging him to permit the film to be shown, is that correct?

A. It could happen. I could state my views to the commissioner, and then it would be up to him to— But I haven't the power to overrule.

165 Q. You don't have the power to overrule then?

A. My function is only to recommend.

Q. And you would, in an appropriate case you would recommend contrary to what the board did, if you felt that that movie should be shown or should not be shown, is that correct?

A. Yes, sir.

Q. Now, you stated—well, that is going into a new subject.

May I ask you, Lieutenant, then, in preparation for tomorrow, to put things on the record, we would like the members of the censor board to appear as witnesses.

I would appreciate your cooperation and the corporation counsel's cooperation in introducing them voluntarily. I realize that it is short notice. However, there was no way of determining these things.

Would you do one more thing, Lieutenant? Would you check your file on a movie entitled Le Plaisir, which was a film that I believe the censor board viewed on July 16, 1954?

166 The Master: Would you have any objection if Lt. Sheehan brought his notes along?

Mr. Mikva: Yes, I would be happy if he did.

The Witness: Well, I did once at a master's hearing, and when I wound up I was without my files. So if the Master will guarantee me—

The Master: If counsel agree, I will see that we won't take your file away from you tomorrow. But we may ask him to bring you back at some other time.

The Witness: I will have to try and remember it, Mr. Mikva.

The Master: Bring it in tomorrow.

Mr. Hartigan: Pardon me, Master. I wanted to ask Mr. Mikva what is the name of it.

Mr. Mikva: Le Plaisir.

Mr. Hartigan: Le Plaisir?

Mr. Mikva: Yes.

Mr. Hartigan: What has this got to do with this case?

Mr. Mikva: Oh, a great deal, Mr. Corporation Counsel.

Mr. Hartigan: Well, that gives me a lot of information.

167 Mr. Mikva: He has got the file. He has got more information on it than I do.

The Witness: Well, if I have the file, I don't have to bring that in without a subpoena?

Mr. Hartigan: No. He wants you to do him a favor.

Mr. Mikva: I am not being cute about this. This film was rejected, and later was sent out; portions of it were cut. It will be helpful in developing the standards that the censor board apply. I think that is one of the ways of getting at the standards that the censor board uses in making its determination.

Mr. Hartigan: Well, then, you won't need the censor board.

Mr. Mikva: Pardon me?

Mr. Hartigan: Well, then, you won't need the censor board if you got that information from the film or the actions in that film.

Mr. Mikva: No, no. That is only one of the standards. We want to know all their standards.

The Master: So that we have got clear what we are going to do, I make the suggestion, Lieutenant, because

168 I think it might be helpful to you to have your records with you when you testify; and if counsel are both agreeable, they won't take your file from you. Is that all right?

Mr. Mikva: Yes.

The Witness: This is the only reason: in another matter I brought notes with me—

Mr. Hartigan: Lieutenant, you won't have to worry

about that. If they want anything that is in the file, we will get photostatic copies; you can submit photostatic copies.

Mr. Mikva: All right. I would like to have a photostatic copy of the card on the movie, The Game of Love.

The Master: Now, with regard to your request about bringing in the censor board, we all have to be mindful of the work that they have to do down there.

This is off the record.

(There occurred at this point an informal discussion, outside the record, which, at the direction of the Master,

• • • • •

176 IGNATIUS J. SHEEHAN, a witness, called on behalf of the plaintiff, having been previously first duly sworn, resumed the witness, was examined and testified further as follows:

Direct Examination (continued) by Mr. Mikva.

Q. Lt. Sheehan, you are same Lt. Sheehan who was previously sworn to give testimony yesterday, is that correct?

A. Yes.

Q. I asked you yesterday to bring with you today, if you could, the card concerning the film The Game of Love. Do you have that with you, sir?

A. Yes, sir.

Q. May I see it?

A. (The witness handed a document to counsel.)

Mr. Mikva: Lieutenant, may we go off the record for a second?

(There occurred at this point an informal discussion, outside the record, which, at the direction of counsel,
177 was not taken down by the reporter.)

Mr. Mikva: Would you mark that plaintiff's Exhibit 12 for identification?

(The document referred to above was marked "Plaintiff's Exhibit No. 12 for Identification, October 5, 1955.")

Mr. Mikva: Off the record.

(There occurred at this point an informal discussion, outside the record, which, at the direction of counsel, was not taken down by the reporter.)

By Mr. Mikva:

Q. Lt. Sheehan, you mentioned that you had other duties as police censor other than the screening of
178 motion pictures, is that correct?

A. Yes, sir.

Q. What are those other duties, Lieutenant, just broadly?

A. Well, pornographic literature and smut and all that sort of stuff.

Q. To seize it or to inspect it or what?

A. No. We usually make raids. Usually there are stag shows where these stag films, as they are called, are shown. I presume everyone knows what a stag film is—acts of perversion and that sort of type, pornographic literature.

Q. How about books and magazines? Do you have any connection with those?

A. Not to any great extent.

Q. Do you ever examine books or magazines to determine whether they are pornographic?

A. Oh, yes, we have lots of pornographic books and pictures.

Q. Are they submitted to you by somebody, or do you—

A. No. We usually, through investigations of raids find it.

179 Q. Oh, in other words, you have no one who reads books regularly to determine whether there is pornographic material in them?

A. No.

Q. Similarly, you don't have anyone who reads magazines regularly or reads newspapers regularly, is that right?

A. No, sir.

Q. Do you have anyone who goes around listening to people's speeches to determine whether they say anything pornographic or obscene or immoral?

A. Not in my department.

Q. Is there any department that you know of in the City?

A. There could; I wouldn't know.

Q. I am again confining myself to what you have termed pornographic or obscene or immoral.

A. There could be, but I wouldn't know.

Q. You would not know that?

How big a staff do you have, Lieutenant, in addition to the police censors that you talked about—the police censor board—that you talked about yesterday?

180 A. We have four investigators, theatre investigators, that check on the permits.

Q. You say, "check on the permits." Does that mean to see whether they have permits?

A. That have the permits; the theatres, each theatre that shows a picture must have a permit.

Q. For that picture?

A. Yes. And where the board asks for cuts, to see that cuts, eliminations, certain eliminations, were made.

Then there is a permit clerk and four men on smut and pornographic literature.

Q. As investigators?

A. Yes.

Q. And that is your entire staff, is that correct?

A. Yes. All those are policemen; policewomen and policemen.

Q. Now, you were appointed in 1952. You took over the present function in 1952, is that correct?

A. Yes, sir.

Q. Previously you were a lieutenant in the police
181 department, but with different functions, is that correct?

A. Yes, sir.

Q. What were your previous functions?

A. Well, general police work, and command a district.

Q. Had you ever previously had any experience with censorship?

A. No, sir.

Q. Before 1952?

A. No, sir.

Q. Lieutenant, what is your formal schooling?

A. Two years of high school.

Q. Have you taken any courses subsequent to your high school of any kind?

A. No, sir.

Q. How many literature courses did you have during high school, Lieutenant?

A. I don't remember.

Mr. Mikva: Off the record.

(There occurred at this point an informal discussion, outside the record, which, at the direction of counsel,
182 was not taken down by the reporter.)

The Master: Let's have a thirty-second recess, Mr. Reporter.

(A short recess was taken.)

The Master: You are welcome. What is your name?
Mr. Favoino: Gabe Favoino. I am from Variety.
The Master: Would you tell us your name again?
Mr. Favoino: Gabe Favoino.

By Mr. Mikva:

Q. How many books on an average do you read a year, Lieutenant?
A. That I couldn't say.
Q. Well, would you say it would be a dozen, two dozen?
A. No.
Q. It is somewhat less than that on an average?
A. Yes.
Q. How many plays do you attend each year, Lieu-
183 tenant?
A. Very few.
Q. Would you say one or two?
A. No.
Q. Have you—do you attend the art exhibits in Chicago?
A. No.
Q. Do you read the book review section of the Chicago Tribune or of any other newspapers?
A. No, sir.
Q. Have you ever read any of Colette's novels?
A. No, sir, not to my knowledge.
Q. Are you aware that Colette's novels circulate in the Chicago Public Libraries?
A. No, sir.
Q. Are you aware that anybody, including a child, can go into the library and obtain Colette's novels?
A. No, sir.
Q. Would you say it is not so, or would you just say you were not aware?
A. No. I say that I am not aware.
Q. I see. Are you aware that Madame Gabrielle
184 Claudin Jouveneal, which is Colette's real name, during her lifetime was one of the most—was the first woman elected president of Concourt Academy?
Mr. Hartigan: Now, that is objected to, if Your Honor pleases. Counsel is going pretty far afield with this witness.

Mr. Mikva: Your Honor, I think that this is very relevant to the issues under the tests we have been talking about he has to judge the artistic merit of this film.

The Master: It is pretty far, but, on the other hand, I think the tests may have some bearing on the particular case. I think we ought to let it in for what it may be worth.

Mr. Mikva: I would like to say this off the record.

(There occurred at this point an informal discussion, outside the record, which, at the direction of counsel, was not taken down by the reporter.)

185 By Mr. Mikva:

Q. Are you aware that she was the second woman in history to be made Grand Officer of the Legion of Honor?

A. No, sir.

Q. Are you aware of her American honors, that she had an honorary associate membership in the American National Institute of Arts and Letters?

A. No, sir.

Q. Have you ever heard of the American National Institute of Arts and Letters previous to today?

A. I may have.

Q. All right. You don't know anything about them?

A. No; sir.

The Master: Mr. Mikva, do you intend to show that some of these things that you are asking him about are presumably facts, whether he is aware of or not aware of are so?

Mr. Mikva: Yes.

By Mr. Mikva:

186 Q. Lt. Sheehan, you heard the testimony yesterday, I think you did, that Mr. Shelton gave? You heard testimony of Mr. Shelton concerning the picture The Game of Love winning the Grand Prix Du Cinema Francais?

A. Yes.

Q. Were you aware of that?

A. No.

Q. Previous to yesterday?

A. No, sir.

Q. Had you heard of the Grand Prix Du Cinema Francais?

A. I may have. I don't recall.

Q. You were not familiar with the manner in which it was granted?

A. No, I am not familiar.

Q. Have you ever heard of the Edinburgh Film Festival previous to yesterday?

A. I could have heard of it.

Q. You don't know anything about how it operated?

A. That's right. I am not familiar with it.

Q. Have you ever heard of the Cannes Film Festival? You will have to excuse my French pronunciation.

187 A. I have heard it, but I am not familiar with it.

Q. And how about the Venice Film Festival?

A. I never heard of it.

Q. How frequently do you read Variety?

Mr. Hartigan: What is Variety?

Mr. Mikva: Variety is a trade magazine covering the entertainment industry.

By the Witness:

A. After all, I don't read Variety.

By Mr. Mikva:

Q. How often do you read Film Daily, which is a trade publication in the film industry?

A. I don't read it.

Q. How often do you read movie reviews in the Chicago newspapers?

A. Not too often.

Q. How often do you read movie reviews in newspapers in other towns?

A. I don't read reviews in other towns.

Q. Do you know who the reviewing critics are for the Chicago newspapers?

A. No, sir.

Q. Have you ever met any of them?

188 A. No, sir.

Q. Lieutenant, have you—how would you define a classic?

A. I don't think I could define it.

Q. Can you name any books that you consider classics?

A. No, sir.

Q. Does that mean you don't think that there are any books that are classics, or that you yourself can't think of any offhand?

A. I can't think of any. I have heard of the classics.

Q. Lieutenant, yesterday I asked you to check your file on a movie application for the picture Le Plaisir. Were you able to check your file on that?

A. Yes.

Mr. Mikva: Could you mark this?

Mr. Hartigan: Now, if the Master please, I object to all of this questioning with regard to this movie, whatever you call it, La Plaisir, as entirely irrelevant to this proceeding, no bearing on it.

189 Mr. Mikva: If the Master please, we are seeking to find out what standards the censor board applies in movies in determining whether a movie is to be accepted or rejected.

We are primarily, we are solely, concerned with the standards as applied in this case. But since these are subjective things and since these are questions of opinion, the only way that we can get at these things, if the Master please, is to try to pinpoint what these standards are, wherever the censors have expressed themselves in this case. The censors have expressed themselves in certain standards used. We want to find out whether the standards set forth are the standards or are not the standards.

Mr. Hartigan: According to that measure, this proceeding could hardly end. It could go to censors of every country and pick out—

Mr. Mikva: This is the only one.

Mr. Hartigan: There is no reason why you can't pick out from what they have turned in.

It is very objectionable.

The only question in this case, if Your Honor 190 pleases, is whether or not this picture—

Mr. Mikva: —is obscene.

Mr. Hartigan: The constitutional question is the question there.

The Master: Well, what concerns me is also the point that Mr. Hartigan made, that if we were going to apply the standard of relevancy alone these proceedings might be interminable.

Perhaps that is one of the points you want to show, Mr. Mikva.

Mr. Mikva: Your Honor—

The Master: On the other hand, we can draw certain limits, even though a thing is relevant, and for the practical purpose of getting at a disposition of this case, we may have to rule out some things that are relevant; or

it seems to me it is largely a question of degree and judgment among ourselves as to how far the plaintiff should be permitted to go.

Now, on the other hand, this is so far the only other film that plaintiff has inquired about, and it is a film that was processed apparently in some way; you intend
191 to show it in someway by this censor board—

Mr. Mikva: And by this witness, Your Honor.

The Master (continuing): —and perhaps by this witness.

Further, if I were to rule it out, Mr. Hartigan, perhaps Mr. Mikva would want to avail himself of Rule 43, so that technically it would be out as far as I am concerned at this particular hearing.

He might still be able to get it in the record and consume the same amount of time as he would if he were permitted to bring it in this way.

Now, some of the things that, Mr. Mikva, that you said in your argument on this objection are conclusions which I don't think that we have yet accept here. But I think on this question we will let it in.

The objection is overruled.

Mr. Mikva: Would you mark this plaintiff's exhibit 13 for identification?

(The document referred to above was marked
192 "Plaintiff's Exhibit No. 13 for Identification, October 5, 1955.")

By Mr. Mikva:

Q. Lt. Sheehan—

Mr. Mikva: Off the record.

(There occurred at this point an informal discussion, outside the record, which, at the direction of counsel, was not taken down by the reporter.)

By Mr. Mikva:

Q. Lieutenant, would you examine exhibit 13 for identification (handing a document to the witness)?

The Master: This is Mr. Jack Willner of the Chicago Daily News. We did not ask you to come here, but you are welcome.

I will ask Mr. White to introduce you to all the people present.

(Mr. White introduced Mr. Willner to all parties
193 present in the hearing room.)

By Mr. Mikva:

Q. Lieutenant, I showed you plaintiff's exhibit 13 for identification. Is that an accurate copy of a memo that you wrote concerning the picture called Le Plaisir?

A. Yes, sir.

Q. I call your attention to the third paragraph of that memo, which states as follows:

"The theme of each of the individual stories was adopted from the works of Guy De Maupasant, a French writer, who was and is notorious for his ribald and obscene 'so-called' classics. Each story is rife with filth and unrestrained sexuality. Neither is there any entertainment value."

Did you write that paragraph, Lieutenant?

A. Yes, sir.

Q. Were you stating there that Guy De Maupasant
194 did not write classics? Is that what those words say?

A. I was just stating what was given to me by the censor board.

Q. By the censor board?

A. Yes.

Q. Do you have the card on this particular film? Did you bring that with you?

A. Yes, sir.

Q. Might I see it?

A. (The witness handed a document to Mr. Mikva.)

Q. Lieutenant, it does not say anything on this card about the absence of entertainment value. Was that what one of the censors told you in private or is that your own?

A. I think in the early—from my—I discussed with them; that was their story.

Q. Lieutenant, it states in here that you concur with the findings of the membership. Did you find that that picture had no entertainment value?

A. Yes, from their story.

Q. Lieutenant, is that one of the standards applied by you and the censors as to whether or not the picture
195 has entertainment value?

A. Well, as I stated yesterday, I am guided by the censors, the censor board, as we call it, the six censors, until such time as there is a review, and I am instructed by the commissioner about such thing and look at the picture, at no time did I ever look at this picture.

Q. I am referring solely at this time to the standard of entertainment value applied to a movie. If there were

exhibited to you an obscene movie that had entertainment value, would you permit it to be seen?

A. Not if it were obscene.

Q. And is entertainment value one of the standards that you apply in determining whether a picture should be accepted or rejected?

A. I would take it into consideration.

Q. As to whether or not it is a good picture?

A. Yes.

Q. In other words, if you like it, that is one of the facts that you would take into consideration, is that correct?

A. Oh, no.

196 Mr. Hartigan: He testified, Mr. Mikva, that he is guided by the judgment of the censors.

Mr. Mikva: I am asking him about his judgment. We are not talking about this picture now. All I am attempting to show is his standards.

By Mr. Mikva:

Q. Let me ask it in another way, Lieutenant.

Is, insofar as your own functions are concerned, forgetting about what the censor board tells you, is entertainment value of the picture one of the factors that you consider in deciding whether the picture should be accepted or rejected?

A. To a certain extent, yes.

Q. So that if a picture were not entertaining and if there were other factor present which you deemed relevant, you might reject the picture? That would be one of the factors involved?

A. I don't understand that question.

Q. Well, what I am saying is: supposing there were a picture that were on the borderline, in your opinion, between rejection and acceptance, and you decided it had entertainment value, could that possibly influence you to reject the film?

197 A. Not necessarily unless it had—it was obscene or immoral or, or probably—

Q. Well, suppose, let's take the opposite example. Suppose a picture were on the borderline between rejection and acceptance—and there are close cases like that? Aren't there pictures that come close to the borderline in your mind? Is that right?

A. Yes, sir.

Q. Suppose there were a picture on the borderline and you found that it had a great deal of entertainment value, would that influence your decision to accept or reject it?

A. Sometimes.

Q. Lieutenant, do you advise the censors that they are to take into account the entertainment value of a picture?

A. I don't recall advising them. But I think that they—I would rather that they answer that for themselves.

Q. I was just wondering whether you advised them so?

A. No.

198 Q. Lieutenant, it appears twice in this exhibit. It says:

"Neither is there any entertainment value."

In paragraph 5 it says:

"There is absolutely no entertainment value."

That makes it sound that entertainment value is a very important standard.

Mr. Hartigan: That is objected to. You are asking the witness about something that is in the letter.

The Master: That particular objection to the question will be sustained.

By Mr. Mikva:

Q. Lieutenant, twice in this letter it states that that picture has no entertainment value and "absolutely no entertainment value," and then it states below that you concurred in your opinion with the members of the censor board, and recommend that the picture Le Plaisir remain on the rejected list.

199 Does that mean in your decision the absence of entertainment value played an important part in rejecting this picture?

A. No, sir.

Mr. Hartigan: That is objected to. It is just calling upon the witness to say how important a part a certain element played in something that occurred many, many months ago, and on a picture that has no bearing on this picture that is before the court.

The Master: Mr. Reporter, will you read that question, please?

(The reporter read the last question.)

Mr. Hartigan: The witness, too, if the Master please, has stated his letter or reporter, whatever that paper is, was made from the recommendations that he received from

the censor board. That is my understanding of what this report is now.

Mr. Mikva: The exhibit, he concurs in this exhibit.

Mr. Hartigan: Yes, that is true. But you are asking him how important a thing was, certain element was.

200 I think it is an unfair question to ask the witness at this date.

Mr. Mikva: Your Honor, I might say that I think you are aware, I think that this looms very significant as to the standards that they apply. If they do apply entertainment value, I want to know about it.

Mr. Hartigan: I think the witness, if the Master please, has repeatedly said that the standard that he applies and that the censor board applies is whether or not these pictures are immoral or obscene.

Mr. Mikva: But, Your Honor, he is here as an adverse witness. Now, if that is what he said, and he has not said that; but if that is what he said in this letter, that impeaches him, and I have a right to question him about it to determine whether or not entertainment value plays a part and how important a part.

The Master: May we just for a moment go off the record, please?

(There occurred at this point an informal discussion,

201 outside the record, which, at the direction of the Master, was not taken down by the reporter.)

The Master: Mr. Reporter, would you read back the question that was objected to?

(The reporter read the pending question as follows:)

"Question. Lieutenant, twice in this letter it states that that picture has no entertainment value and 'absolutely no entertainment value,' and then it states below that you concurred in your opinion with the members of the censor board, and recommend that the picture Le Plaisir remain on the rejected list.

"Does that mean in your decision the absence of entertainment value played an important part in rejecting this picture?"

202 The Master: I will just say on the record that the objection is overruled.

Mr. Mikva: And the answer may stand?

The Master: What was the answer, Mr. Reporter?

(The reporter read the witness's last answer, as follows:)

"Answer. No, sir."

The Master: And the answer may stand.

Mr. Mikva: I would like at this time to offer in evidence plaintiff's exhibit No. 13.

Mr. Hartigan: It is objected to, if Your Honor pleases, on the same ground that I stated originally when counsel asked for the production of that letter.

The Master: Off the record.

(There occurred at this time an informal discussion, outside the record, which, by direction of the Master, was not taken down by the reporter.)

203 Mr. Hartigan: It is remote, and it has no bearing on the case that is before the court.

The Master: Off the record.

(There occurred at this point an informal discussion, outside the record, which, by direction of the Master, was not taken down by the reporter.)

Mr. Mikva: May we take a minute recess? Will you mark this, Mr. Reporter, plaintiff's exhibit 14 for identification?

(The document referred to above was marked "Plaintiff's Exhibit No. 14 for Identification, October 5, 1955.")

Mr. Mikva: Off the record.

(There occurred at this point an informal discussion, outside the record, which, at the direction of counsel,
204 was not taken down by the reporter.)

The Master: Mr. Reporter, will you note on the record that Mr. Kenneth Douty at this point entered the room and was introduced all around.

Plaintiff's exhibit 13 may be received subject to the objection.

(The document referred to above, which had been heretofore marked "Plaintiff's Exhibit No. 13 for Identification, October 5, 1955," was received in evidence and marked "PLAINTIFF'S EXHIBIT NO. 13, October 5, 1955.")

Mr. Mikva: Master, may I offer plaintiff's exhibit 14 into evidence?

Mr. Hartigan: And I have the same objection to that exhibit as I had to the report.

The Master: It will be admitted subject to the same objection.

205 (The document referred to above, which had been heretofore marked "Plaintiff's Exhibit No. 14 for Identification, October 5, 1955," was received in evidence and marked "PLAINTIFF'S EXHIBIT NO. 14, October 5, 1955.")

By Mr. Mikva:

Q. Lieutenant, on what has been introduced as plaintiff's exhibit 14, the card, dealing with the movie Le Plaisir, on the bottom it states:

"There is a low light respect for religious ceremony in the picture."

Is that one of the standards that the censors use?

A. Well, I couldn't tell you.

Q. Did you ever advise them to use that standard?

A. No, sir.

Mr. Mikva: I would like to turn over again my examination at this time to Mr. Bilgrey, who has further questions of Mr. Sheehan.

By Mr. Bilgrey:

206 Q. Lieutenant Sheehan, do you mind if I ask you a few more questions on the standards in The Game of Love, specifically? I would like to ask you first before I go into that, if you can explain the meaning of the pink permits that you issue.

A. Meaning of what?

Mr. Hartigan: The meaning of what?

By Mr. Bilgrey:

Q. The pink permits. I understand that you have several classifications that the City issues to exhibitors in the showing of films.

A. Yes. Adult permit you mean?

Q. Yes.

A. Yes.

Q. Well, could you explain what the function is of that particular permit?

A. I couldn't very well offhand. There is a section in the ordinance governing adult permits. I don't know just in particular what you are referring to.

Q. Well, have you issued a permit of that type recently to any films?

A. Oh, yes, sure.

207 Q. Can you briefly define the basis of the distinction between pink permits and other permits?

A. Well, the general permit entitles anybody, from youngsters up, to see the picture; or an adult permit, anyone from the age of twenty-one years.

Q. Well, on what grounds are the pink permits issued?

A. Well, each picture would be different, I presume, in the adult permits.

Q. Did you issue a pink permit in the case of the picture La Ronde?

Mr. Hartigan: That is objected to, if the Court please, on the ground, or rather, on the same ground that I had to the other inquiry on this, to the picture La Ronde.

The Master: You intend to show its relevancy?

Mr. Bilgrey: We intend to show its relevancy, Master.

The Master: I will admit it, and overrule the objection, subject, of course, to counsel's right to renew it, and
208 subject to your promise to show its relevancy.

By the Witness:

A. The name is awful familiar. We could have. I wouldn't know offhand.

By Mr. Bilgrey:

Q. Did you see that film yourself, Lt. Sheehan?

A. I don't recall.

Q. Do you recall that the film was the subject of a United States Supreme Court action?

A. It could have been. I really don't know.

Q. Lt. Sheehan, are you familiar with the language in the ordinance in Section 155-4, to the effect that a permit shall be granted unless a film is immoral or obscene?

I would like to show it to you (handing a document to the witness).

A. Yes, it is immoral, obscene, depraves, immorality, lack of virtue of a class of citizens of any race, creed or color or religion; he exposes them to contempt or derision.

Q. That is the ordinance which is the basis for your authority to act, is it not, Lt. Sheehan?

A. Yes, sir.

209 Q. Well, in applying these standards, if any, set forth in this ordinance, would you say that the terms, "immoral" and "obscene" are used interchangeably, or what would you say that they mean something different, that each of these terms has its own distinctive meaning?

A. Immoral and obscene?

Q. Yes, Lt. Sheehan.

A. They could have. I wouldn't know.

Q. In other words, would the word "immoral" have the same meaning to you as the word "obscene"?

The Master: Well, there has been no objection—

By the Witness:

A. No.

Mr. Hartigan: I am objecting to all of this testimony, and you have let it in subject to the objection, as I understood it, Master.

The Master: Counsel, you have the right to note it.

Counsel, could you give the context in which these words are used that have this meaning?

Do you want to go off the record? I would like to explain it.

210 Mr. Mikva: All right.

(There occurred at this point an informal discussion, outside the record, which, at the direction of the Master, was not taken down by the reporter.)

The Master: You had better put this on the record.

I will admit it subject to the objection, and Mr. Bilgrey's promise to clarify the context in which he asks this question.

Do you want the question read over to you?

Mr. Hartigan: He answered the question, I think.

The Master: Mr. Reporter, will you kindly read to me the last question and answer?

(The reporter read the last question and answer.)

The Master: It may stand subject to the objection and counsel's promise to clarify the context in which this is used.

By Mr. Bilgrey:

211 Q. Lt. Sheehan, did you read Judge Schaefer's opinion in the American Civil Liberties Union against the City of Chicago case?

A. I read parts of it.

Q. Did you read the part setting forth the court's standard or—

Mr. Hartigan: Well, now, if Your Honor pleases, it seems to me that Judge Schaefer's opinion is there for anybody to read it.

The interpretation which he is asking this witness to put on something that was said in Judge Schaefer's opinion, I don't think that it is relevant to this hearing, and I think it is unfair to ask this witness that question.

They might better ask it of you.

The Master: It will be, I am sure.

Mr. Bilgrey: Your Honor, if I may say, this witness is the person who applies the standards set forth by that

opinion. So if any person should be familiar with it, it is Lt. Sheehan.

Mr. Mikva: I might say further, Your Honor, one of the questions is the standards of the statute that were
212 applied. Here's the man who applies it. He can find out whether he misapplied it. Then if he applied the standards, Judge Schaefer's standards were the law; or he applied it under those standards.

Mr. Hartigan: You are referring to this picture The Game of Love?

Mr. Mikva: That is correct.

Mr. Bilgrey: Yes, we are.

Mr. Hartigan: You are asking what standard he applied?

Mr. Bilgrey: Well, that will be the next question.

Mr. Mikva: He promised to connect it up.

Mr. Hartigan: Whether it agrees with Judge Schaefer's definitions or not; certainly it doesn't make any difference whether counsel is asking the witness on the standards, what standard he applied on the reshowing of this picture on an application to show the picture, that is a different thing.

The Master: Well, then, will you withdraw your objection?

Mr. Hartigan: I will withdraw my objection
213 on that score.

The Master: May I see to you, Lt. Sheehan, all you have to do is your best in answering these questions; and if you can't answer them, tell us that you can't answer them; and what counsel for the plaintiff say is the law will not necessarily be the law as we find it in this case.

The Witness: Yes, sir.

Mr. Bilgrey: Well, now, may I say something, Master? Instead of asking this question, can I have Lt. Sheehan read the particular definition in question?

The Master: You may. You want him to read something in Judge Schaefer's opinion?

Mr. Bilgrey: Yes.

Mr. Hartigan: I don't see what relevancy that has in here. Judge Schaefer's opinion was subsequent to the passing on this film permit.

Mr. Mikva: No, it wasn't.

Mr. Hartigan: I think he had Judge Schaefer's opinion in mind when he made some recommendation with ref-

erence to this particular film. If he didn't what dif-
214 ference does it make what Judge Schaefer said. It is what standard he applied.

The Master: I don't know how much difference it will make, but if it is in line with counsel's promise—

Mr. Hartigan: It is stretching out the hearing. Counsel has gotten in other remote propositions with reference to this film La Ronde, which is another film besides the one that Mr. Mikva talked about, and he was going to stop at that.

Now you are getting into the realm of discussing Judge Schaefer's opinion with the witness, a layman.

Mr. Bilgrey: Well, all I want to find out is if the witness applied that particular standard.

Mr. Mikva: Or some other standard.

Mr. Bilgrey: Or some other standard.

Mr. Hartigan: Ask him what standard he applied, if he had passed on this film or made any recommendations, given his recommendations on the standards that he applied, or what did you do.

The Master: Mr. Bilgrey, if this question is in line with yours and you agree to it, I will permit
215 it.

Mr. Bilgrey: Thank you, Master.

By Mr. Bilgrey:

Q. Would you kindly read this paragraph, Lt. Sheehan (handing a document to the witness), in Judge Schaefer's decision? Could you read it to the court, please?

A. "A motion picture film or view shall be considered to be obscene if, when considered as a whole, its calculated purpose or dominant effect is substantially to arouse sexual desire; and if the probability of this effect is so great as to outweigh whatever other merits the film may possess"—

Q. Now, thank you, Lt. Sheehan.

Mr. Hartigan: Now, Mr. Counsel, will you clarify as to what that excerpt was that you asked this witness to read?

Mr. Bilgrey: Yes, that was an excerpt from the decision by Judge Schaefer in the American Civil Liberties Union against the City of Chicago.

Mr. Hartigan: That is all right. If that is—
216 I just want you to have—I want you to identify the excerpt.

By Mr. Bilgrey:

Q. Now, Lt. Sheehan, when did you first see The Game of Love after it had been shown to the censor board?

A. June the fifteenth.

Q. And as a result of that showing you then issued your recommendations along with these censors who viewed it, is that correct?

A. I sent in a report to the commissioner.

Q. Now, in that report did you state that you found "the film to be indecent, with immorality featured and dialogue unfit"?

A. (The witness refers to a document.) I think I did. I can't—If I didn't, that is what I meant to convey.

Q. Well, you sent in your report in June— on June 16, did you not?

A. Yes, June.

Q. You stated that:

"It was the unanimous opinion of all concerned 217 that the film be continued in the same status"?

A. Yes, sir.

Q. Now, were your recommendations based along the same general lines as those of the censor board in the first showing?

A. Yes.

Q. Did you find the film to be obscene at that time?

A. I did not see the first showing.

Q. Well, did you find the film to be obscene when you did see it?

A. Yes, sir.

Q. But you did not report that you found the film to be obscene? You merely— Is that correct?

A. I don't know whether I did or not.

Q. Well, didn't you merely state that the film should be rejected, in your report?

A. "The entire picture was found to be in violation of the City ordinance of the City of Chicago, and that it is not acceptable to standards of decency; they have immorality feature and dialogue unfit."

Q. Well, could you at this time clarify for 218 the benefit of the court what you considered to be your standards of what is decent and what is not decent?

A. Well, you can take this particular picture: right from the beginning the boy, in the nude, running up on the beach in front of a bunch of little girls.

Q. Well, did you see that boy in the nude?

A. Yes, sir.

Q. Didn't have a hat in front of him?

A. Not when he ran up the beach. He finally got a hat somewhere.

Q. Well, was he fully exposed, if you recall, at any time?

A. I would say yes.

The Master: Don't hesitate, counsel, for the benefit of the witness and for your benefit to make the question more concrete so that there would be no possibility of misunderstanding.

By Mr. Bilgrey:

Q. Did you see any of his private parts at any time?

A. I recollect when he laid on his stomach and his testicles were shown.

219 Q. If they were not, would your findings have been different, Lieutenant, on that particular scene?

A. No, no, not in the scene when you take the little girls that were on the beach there, looking right at him fully exposed.

Q. Well, wasn't he in the water when these girls looked at him? Do you recall that?

A. No. He was on the beach when they shouted to him to turn around, "Silly boy, we already seen everything."

Q. Well, now, what standards did you apply in judging the remainder of this film?

A. Well, I think there were certainly obscene and where he went to bed with the matronly woman and with a sixteen-year-old boy, and the suggestion was there three different times where he had intercourse with her.

Q. Well, let me ask you this, Lieutenant, and I hate to wander away from this movie: But aren't there many other movies currently showing in this city, which have been licensed by you, where there is a suggestion of sexual intercourse?

Mr. Hartigan: Well, that is objected to, if the 220 Court please. The question is, what is in this particular movie, and not what is in something else.

If the Court please, if they happen to make a mistake and let some other picture be shown there, we might enter into an assumption that there is such a picture, and there may be. We are going far away in this field.

The Master: On that last point the witness could say that was a misstatement; that was a suggestion.

Mr. Bilgrey: Well, Master, excuse me. We are trying to arrive at the standard which the witness uses in arriving at his decision—

Mr Hartigan: Well, if Your Honor pleases—

Mr. Bilgrey (continuing): —and these standards are not in a vacuum; they are relative.

Mr. Hartigan (continuing): —as I understand it, Lt. Sheehan does not see the picture unless there is a reshowing, unless a reshowing is asked for. Once the picture is rejected by the censor board and the distributor or the maker of the film does not ask the commissioner to

• • • • •

227 The Master: Off the record.

(There occurred at this point an informal discussion, outside the record, which, at the direction of the Master, was not taken down by the reporter.)

The Master: Mr. Reporter, what is the last thing we have on the record?

(The reporter read Mr. Hartigan's remarks, which preceded the off-the-record discussion.)

The Master: I will permit it subject to the objection. And, Mr. Hartigan, you have preserved your rights in your excellent statement contained in your objection. You can argue that later if you desire.

Will you read the last question, Mr. Reporter?

(The reporter read the pending question, as follows:)

228 "Question. Well, let me ask you this, Lieutenant, and I hate to wander away from this movie: But aren't there many other movies currently showing in this city, which have been licensed by you, where there is a suggestion of sexual intercourse?"

By the Witness:

A. Not to my knowledge.

By Mr. Bilgrey:

Q. How about Sadie Thompson, Lieutenant? Are you familiar with that?

A. I am not familiar with it.

Q. Are you familiar with Captain's Paradise?

A. No, sir.

Q. I Am a Camera?

A. No, sir.

Q. Seven Year Itch?

A. No, sir.
Q. Magdalena?
A. No, sir.
Q. Place in the Sun?
A. No, sir.
Q. East of Eden?
A. No, sir.
Q. Gigi?
A. No, sir.

Mr. Bilgrey: Master, I would like at this time to introduce plaintiff's Exhibit 12 for identification into evidence.

The Master: Have you seen it, Mr. Hartigan (handing a document to Mr. Hartigan)?

Mr. Hartigan: I presume, Master, that this will go in subject to my objection?

The Master: Very well. That may be admitted.

(The document referred to above, which had heretofore been marked "Plaintiff's Exhibit No. 12 for Identification, October 5, 1955," was received in evidence and marked PLAINTIFF'S EXHIBIT NO. 12, October 5, 1955.")

The Master: This is the one on The Game of Love?

Mr. Hartigan: Yes.

The Master: Off the record.

(There occurred at this point an informal discussion, outside the record, which, at the direction of the Master, was not taken down by the reporter.)

Mr. Bilgrey: We can finish in less than five minutes.

By Mr. Bilgrey:

Q. Lt. Sheehan, on plaintiff's Exhibit 12, can you identify the handwriting?
A. No.
Q. It is not your handwriting?
A. No, sir.
Q. Now, this question pertaining to a statement you made before regarding the boy in this particular film walking on the beach, and you stated that it is your belief that the young girls on the beach was him in the nude; is—
A. Yes, sir.
Q. (continuing): —is that correct?
A. Yes, sir.
Q. Now, is the reason that you object to this scene your particular belief that these girls might have seen this boy in the nude?

A. Read that over, will you?

(The reporter read the last question to the witness.)

By the Witness:

A. Partially.

By Mr. Bilgrey:

Q. In other words, if you yourself did not see this boy in the nude, you would feel this to be indecent?

Mr. Hartigan: What would be indecent, the whole picture or just this scene?

Mr. Bilgrey: No. This one particular scene.

Mr. Hartigan: Do you understand the question, Lieutenant?

The Witness: No, sir.

Mr. Hartigan: Will you read the question, Mr. Reporter, please?

(The reporter read the pending question to the witness.)

By Mr. Bilgrey:

232 Q. Do you want me to rephrase that question?

I don't know how to answer that.

The Master: Mr. Bilgrey—

Mr. Bilgrey: Yes.

The Master (continuing): —I don't know myself how clear that question and the answer that it calls for might be. I have seen the picture. I am concerned whether it would be clear to a reviewing court. It may be. It may be perfectly clear to you, but the witness says it is not clear. Don't worry about being concrete about these things in this hearing. Certainly, we are not going to censor you for that.

Mr. Bilgrey: I will rephrase the question.

By Mr. Bilgrey:

Q. Are you sure that you saw any of this boy's private parts in any scene of this film?

A. I am definitely sure. In the first time I know. No. In the second time, too. I saw it when Mr. Milaniphy was there, and since learned that the commissioner of police was there. I recall after Mr. Milaniphy went, I talked it over that he was there, as I wasn't there when he was

233 there that day.

Q. Now, in what scene did you see the private parts and what private parts?

A. Well, what you call his balls, I presume.
Mr. Hartigan: Testicles.
The Witness: His testicles.

By Mr. Bilgrey:

Q. In what scene was that, Lt. Sheehan?
A. When the boy came out of the water and running up towards the beach.
Q. You saw his testicles?
A. Yes. When he was thrown on the ground on his stomach.
Q. Now, are there any other scenes that you objected to specifically in this film?
A. Well, there is lots of them.
Q. Can you name a few?
A. Well, a matronly woman seducing the boy.
Q. Lt. Sheehan, did you actually see any seduction in the film?
A. No, sir.
Q. So that there is only a suggestion of seduction then, is there not?
234 A. Very suggestive.

The Master: Mr. Bilgrey, I realize, it appears to me, that this is perhaps a very important line of questions, and I hate to interrupt counsel in doing it. We have some time limitations. Now, if it will be all right with you if you adjourn at this time, will it, and you can start with the Lieutenant when we resume?

Mr. Bilgrey: We are all through with Lt. Sheehan, except for one question.

The Master: I thought that you would probably go into this subject very deeply.

Mr. Bilgrey: No, we are not going into that in detail. May I ask that one additional question?

The Master: Go right ahead.

By Mr. Bilgrey:

Q. Did you find this film to be entertaining, Lt. Sheehan?
A. Not to me.
Q. If you had, would that have played any part in your decision?
A. I don't think so. The preponderance of sex
235 is too much to overcome any other points in the picture.

Mr. Bilgrey: Thank you very much, Lieutenant.

Mr. Mikva: I would like to say this before we adjourn. In case we don't get another chance, I want to say to you, Lt. Sheehan, the way you have conducted yourself at this hearing, we very much appreciate. I want to again state for the record that at no time did plaintiff's counsel have any desire or intention of embarrassing you, Lieutenant.

Mr. Bilgrey: I mean that, too.

Mr. Hartigan: Do you want to write to the mayor and the commissioner of police? Maybe he'll get a raise.

The Witness: That and twenty cents will get me a ride.

The Master: Will you be back at two? I want to ask some questions, and Mr. Hartigan will have some questions. This is off the record, please, Mr. Reporter.

(There occurred at this point an informal discus-
236 sion, outside the record, which, at the direction of the Master, was not taken down by the reporter.)

The Master: Mr. Reporter, show an adjournment to two-thirty this afternoon.

(Whereupon the hearing in the above-entitled cause was recessed until two-thirty o'clock p.m. of the same day, namely, Wednesday, October 5, 1955.)

* * * * * *

239 And thereupon the following further proceedings were had herein:

IGNATIUS J. SHEEHAN, a witness, called on behalf of the plaintiff, having been previously first duly sworn, resumed the witness stand, was examined and testified further as follows:

Cross-Examination by Mr. Hartigan.

Q. Mr. Sheehan, you are the same Lt. Sheehan that testified here this morning?

A. Yes, sir.

Q. Now, will you state for the record just what your duties are with reference to this censorship assignment?

A. Yes, sir. We have what we call the censor unit that combines other work besides censorship of movies, such as in this case. It takes in smut, pornographic literature, stags, and vice raids.

Q. Arcades?

A. Arcades and all that.

240 And then there is what we call a censor board, which I am—I might be the administrative office of the censor board.

Q. Are you one of the censors?

A. No, sir.

Q. Now, go ahead. What are your duties then with reference to these pictures?

A. The pictures are reviewed by the censor board, consisting of six members, and they make out a card similar to what we have here today. I think that counsel—

Q. They were offered as exhibits?

A. Yes, they were offered as exhibits.

I get these cards, and they are either approved or rejected or adulted. There is three versions.

And then we have a man that is a permit clerk that is authorized to sign the commissioner's name to these permits, and he issues the permit to what particular type of permit they allowed.

If it is rejected, then there is no permit issued.

Now, in the ordinance, the producers of a film or
241 the owners of a film, when they have a rejection or an adult, they can write the police, commissioner of police for a review by the censor board, asking for a review of the same picture.

Mr. Hartigan: Well, pardon me there a minute. May I just lead him a little bit?

Mr. Mikva: Surely.

Mr. Hartigan: I think that it may clarify. If you want to object to it, you can.

Mr. Mikva: Surely.

By Mr. Hartigan:

Q. Don't you mean, Lieutenant, that after a view of the picture by the censor board, when if it is rejected by the censor board that the producer of the picture or the distributor of the picture can then make a request of the commissioner of police for a review—

A. Yes.

Q. (Continuing): —of the picture?

A. Yes, sir.

Q. And then what? That is what you meant to say, wasn't it?

A. That is what I was trying to convey.

242 And then when the commissioner gets that letter it is forwarded to me for—to have the board rescreen

or re-review the picture and a report from myself as to what was done with the picture.

Q. At this review?

A. Yes, sir.

Q. Now, then, you make your—you get your report of the review from the censor board, is that it?

A. Yes, sir.

Q. And then you make your report from what they give you to the commissioner of police as to the result or the censors' decision on the review?

A. Yes, sir. I give them a synopsis. I sit in and watch the—

Q. You say that you give them a synopsis. What you mean, to the commissioner of police; a synopsis, you give that to the commissioner of police?

A. A synopsis to the commissioner of police of the story and what the view of the board are.

Q. At the review do they make out these cards that you speak of?

243 A. At the re-review they just use the same card.

Q. Dated?

A. And date, it is of the date that they have the second review.

Q. Now, Lieutenant, calling your attention to the picture involved in this case—

Mr. Hartigan: What do you call it?

Mr. White: The Game of Love.

By Mr. Hartigan:

Q. (Continuing): —The Game of Love—

Mr. Hartigan: Excuse me.

By Mr. Hartigan:

Q. (continuing): —The Game of Love, what transpired with reference to that picture over there at your censor bureau?

A. (There was no response.)

Q. An application was made for a permit?

A. Originally this?

Q. Yes.

A. When t › film was sent in—

Q. All rigl Will you take over from there and say what occurred, to your knowledge?

A. (continuing): —the application was denied.

244 The film was rejected.

Q. Well, did the censor board or the censors, whatever you may call them, view the film after the application was made for a permit?

A. Yes, sir.

Q. This Game of Love film?

A. Yes.

Q. And then what occurred?

A. They rejected the picture.

Q. And you—they made their report of rejection on the card that you are talking about, which is in evidence here?

A. Yes, sir.

Q. And what did you do then?

A. Well, whoever sent in the film at the time was notified that it was rejected. I don't know who sent the film in originally.

Could I have the card?

Mr. Mikva: Surely (handing a document to the witness).

Mr. Hartigan: Show on the record that the witness is referring to the card.

Mr. Mikva: Plaintiff's exhibit 12.

245 Mr. White: Twelve.

The Witness: Twelve.

By Mr. Hartigan:

Q. Plaintiff's exhibit 12?

A. Twelve.

The man that sent the picture in originally was the man named Abe Teitel: T-e-i-t-e-l. And the board voted to reject it on June 15—or May 6, 1955.

Q. Then what did you do in that connection, if anything?

A. Notified—

Q. Teitel?

A. (continuing): —Teitel that the picture was rejected.

Q. Then what happened?

A. A letter was sent to me from the commissioner's office, from the commissioner.

Q. Of police?

A. Commissioner of police, on June 11, asking for an appeal from the decision of the commissioner denying the permit.

The censor board then reinspected the picture and 246 again rejected.

Q. And they noted their rejection on the card that you have before you?

A. Yes, sir.

On June 15th they reinspected, and so I wrote—at that time I viewed the picture with them—and I wrote a report to the commissioner of police.

Q. And in that report what was the burden of the report?

A. Well, it was a synopsis of the story and what the board's action was on the picture.

Q. Did you, Lieutenant, have any part in the deliberations of the censor board on the re-examination of that film as to the acceptance or rejection of it?

A. No, sir, I never have any contact with the board as far as deciding or making their decision. That is up to the six members of the board.

Q. And you have nothing to do with the shaping of their decision?

A. No, sir.

Q. As I understand it.

247 A. That is correct. I have no powers—

Q. Is that correct?

A. (continuing): —on the board. Just an administrator for the commissioner of police.

Q. Now, Lieutenant, referring to this movie that was spoken of this morning by one of counsel here—La Ronde: did you have to do with that film? What did you have to do with that film, if anything?

Mr. Hartigan: Have you got those exhibits?

By the Witness:

A. Would it be Le Plaisir, do you mean?

By Mr. Hartigan:

Q. Yes, Le Plaisir.

Did you have something to do with this movie Le Plaisir that was spoken of by counsel this morning?

A. Yes, sir.

Q. It is referred to here in plaintiff's exhibit for identification 13.

A. Yes, sir, I have.

Mr. Mikva: Plaintiff's exhibit 13.

By Mr. Hartigan:

248 Q. Plaintiff's exhibit 13.

A. I have a copy.

Q. Oh, you have a copy of it?

A. Yes.

Q. Now, what happened, if you know, with reference to that film? They asked a permit on it, did they?

A. Yes, sir.

Q. All right. Can you tell what occurred?

A. The picture was rejected by the board (the witness referring to a document) on July 16, 1954.

On November 12 I received a letter from the commissioner of police requesting a report on that picture.

Nothing—no reinspection. There was no request for a reinspection, being a report which I gave to the commissioner of police.

Q. And that report is contained in your letter or your report of November 16, 1954, which is plaintiff's exhibit 13?

A. Yes, sir.

249 Q. Now, you had nothing to do with the censoring of that picture, did you?

A. I never saw the picture, no, sir.

Q. No.

Now, there was another picture referred to this morning by counsel, one of counsel. Was it La Ronde? Was that the name of it?

Mr. Bilgrey: Yes.

By Mr. Hartigan:

Q. Did you have anything to do with that picture?

A. I don't remember ever seeing the picture La Ronde.

Q. You had nothing to do with—you have nothing to do with the censoring of any of these pictures, isn't that a fact?

A. No, sir. My job is absolutely foreign to censoring motion pictures.

Mr. Hartigan: Can you think of anything else?

Mr. White: No.

Mr. Hartigan: I think that is all.

Mr. Mikva: I have a few questions on cross.

250 *Redirect Examination by Mr. Mikva.*

Q. Lt. Sheehan, did I understand you correctly that you testified this morning that, or yesterday afternoon, I don't remember which, that you felt in a proper case you could overrule the board; is that correct or not?

A. If I said that, I would be wrong. I could not overrule them, the board.

Q. In other words, you would like to change your testimony at this time?

A. If I said that, yes, I would.

Mr. Hartigan: Could you remember it, counsel?

Mr. Mikva: I believe he did.

The Witness: Well, if I did—

By Mr. Mikva:

Q. Could you make a contrary recommendation to what the board does?

A. Well, I could probably make a contrary report, if it be a contrary report.

Q. Lieutenant, referring again to plaintiff's exhibit 13, the last paragraph states:

251 "The undersigned concurs with the finding of the membership of the censor board * * * respectfully rejects * * * and that it remain at the present status * * * and that it be rejected."

Didn't you say that you concur in the report?

A. No, sir.

Q. You did not see the movie?

A. No.

Q. You didn't? You could concur or not concur?

A. He just asked me for a report.

Q. But you told me that you agreed with the report, is that right?

A. Yes, after—

Q. In other words, you agreed that it did not have any entertainment value, even though you did not see the movie?

A. I am going entirely by what I have been told.

Q. Yes, but the concurrence, you read or listened to what the board told you, and you agreed with what they told you?

252 A. Yes, sir.

Q. But that was agreement on a film which you did not see?

A. Yes, sir.

Q. Now, did you see the film The Game of Love?

A. Yes.

Q. Now, when you stated in your report here on The Game of Love, which has been introduced, I believe, as plaintiff's exhibit 3, that

"• • • it is not acceptable to standards of decency with immorality featured and dialogue unfit,"

was that your opinion or the censor board's opinion on the film The Game of Love, in your May 31, 1955 report?

A. Yes, that was both my opinion and the board's opinion.

Q. In that case that was your opinion, is that correct, in the case of The Game of Love?

A. No, not on the report of May 31, because I had not seen the picture at that time.

Q. Yes, I see. Well, how about the June 16
253 report that you made, or approximately around that time, that you made to the deputy commissioner, after the rescreening? Do you know which report that I am referring to?

A. Yes, I recall that.

Q. What is the date of that? Do you have that?

A. June 15, I think, was the day.

Q. June 15?

A. Yes.

Q. Was that your report or was that again the board's report?

The Master: Excuse me. Are all those marked for identification?

Mr. Mikva: They have all been marked for identification, yes.

By the Witness:

A. Those are all to the commissioner of police— all of my reports.

The Master: Let's have an identification number.

Mr. Mikva: I don't have that report, Your Honor. It was never given us. I know it exists, but it has
254 never been offered. I would like to offer it if the Lieutenant will give me a copy of it. We have never seen that report.

The Master: Let's go off the record for a moment.

(There occurred at this point an informal discussion, outside the record, which, at the direction of the Master, was not taken down by the reporter.)

Mr. Mikva: Mr. Reporter, will you mark this document plaintiff's exhibit No. 15 for identification, please?

(The document referred to above was marked "PLAINTIFF'S EXHIBIT NO. 15 for Identification, October 5, 1955.")

By Mr. Mikva:

Q. Lieutenant, referring to plaintiff's exhibit 15 for
255 identification, which is a report that you made to the deputy, Deputy Commissioner O'Regan, on June 15, 1955, whose synopsis of the film is that that appears in here? There is a synopsis of the film? Is that yours?

A. Yes, that is mine.

Q. You made that up?

A. That's right.

Q. By yourself or did you confer with the other censor board members?

A. No, I didn't confer.

Q. This is all your language?

A. That is mine on the picture I saw.

Q. Lieutenant, it says in here, in the first paragraph, that

"Although his private was not actually exposed in the film, it was indicated; the same was seen by a group of girls, by the accompanying girls. 'Turn around silly girls.' Phillipe was taken into custody by police for indecent exposure."

256 Now, based upon a re-reading of this report, would you care to change your testimony of this morning, that you saw his testicles?

A. No, sir.

Q. You think that it was; you saw it?

A. No, sir.

Q. In other words, the report was wrong?

A. Well, when I saw the picture the second time, later, not in the first picture.

Q. When the Master saw it, is that correct?

A. No.

Q. This is dated June 15, 1955.

A. All right. I saw it again with Mr. Melaniphy and the commissioner of police.

Q. And at that time—

A. At a later date.

Q. At that time you saw his testicles?

A. I saw his testicles.

Q. But in this film, when you saw this one, you did not see his testicles?

A. No, sir.

Q. Now, it says in here it is indicated, with the same
257 meaning; his privates were seen by a group of girls in the picture. Is that what you found indecent, the fact that these girls in the film saw his privates?

A. It could be one of the things.

Q. Now, would it make any difference to you if someone were to say that he had had trunks on, and that the girls did not see his privates? Would that have affected your decision?

A. Well, I saw him without trunks on.

Q. Not at this time you did not see it?

A. Certainly.

Q. Right in this report it says you never saw his privates.

Mr. Hartigan: He did not say that saw him with trunks on.

By the Witness:

A. I did not say have trunks on. He was stark nude.

By Mr. Mikva:

Q. I see. You state that you make a synopsis of the picture to the commissioner in every case. Is that true?

A. No, sir.

258 Q. Only on the cases that are re-reviewed?

A. Not always in the cases that are re-reviewed. Where he has me sit in to— I would like to start that all over again.

Q. Surely.

A. Whenever the commissioner of police gets a written request for a re-review he will forward the letter to me with the— to have the board review, and for me to sit in and give the report.

Q. And then you make a synopsis; is that the point?

A. Yes.

Q. And that is usually your synopsis, without regard to what the censors say?

A. I never talk to the censor.

Q. You make your own synopsis of the film?

A. Yes.

Q. And everything in here is your report; your own synopsis, is that correct?

The Master: You are referring there to what exhibit?
Mr. Mikva: Plaintiff's Exhibit 16 for identification.

259 By the Witness:

A. To the synopsis?

By Mr. Mikva:

Q. Yes.
A. Yes.
Q. All right. Now, it says in here "that it is very evident from the dialogue, that he was seduced by the woman," is that correct?
A. Yes.
Q. It says that?
A. Yes.
Q. Now, what made it—in the dialogue what made it evident that he had been seduced by her?
Mr. Mikva: Strike that question.

By Mr. Mikva:

Q. Lieutenant, what do you mean by the word "seduce"?
A. Well, take a boy of sixteen years old and a matronly woman, we will say of the forties, fifties, whatever she happened to be. Well, that would be my idea of seducing a young boy.
Q. That would be seducing?
A. Yes.

260 Q. In every circumstance?
A. In this particular story that we are watching.
Q. It also says in here that
"Vinca, the girl, learning of the escapades, charged that Phillipe, and evidently being sex-minded, * * *"
I assume you mean that Vinca was sex-minded?
A. Yes.
Q. What in the picture indicated to you that she was sex-minded?
Mr. Mikva: Strike that.
By Mr. Mikva: Q. What do you mean by "sex-minded," Lieutenant?
A. Well, I couldn't define—
Q. Do you mean an abnormal or a normal sexual feeling, Lieutenant?
A. Well—
Q. In your own words.
A. It just seemed her desire to want to have sexual relations with him.

Q. Does that strike you as abnormal or normal?
A. Well, I would say it is abnormal in a girl that age.
Q. In a girl fifteen?
261 A. (There was no response.)
Mr. Mikva: I would like to introduce plaintiff's exhibit 15 at this time into evidence.
Mr. Hartigan: Subject to the objection, if the Court please.
The Master: It may go in.
(The document referred to above, which had heretofore been marked "Plaintiff's Exhibit No. 15 for Identification, October 5, 1955," was received in evidence and marked "PLAINTIFF'S EXHIBIT NO. 15, October 5, 1955.")
Mr. Mikva: I will withdraw that and get a copy and give you the original back.
The Witness: O.K.
Mr. Bilgrey: May I ask a few questions, a few short questions; then I think we will be all through with redirect?
The Master: Yes.

By Mr. Bilgrey:

Q. Lt. Sheehan, did you actually see any seduction taking place at any part or at any time in the film?
262 Mr. Hartigan: Mr. Counsel, may I suggest this, if I may? Pardon me. Do you mean did he see any actual act of intercourse?
Mr. Bilgrey: Yes, that is right.
Mr. Hartigan: Well, maybe he understands that.

By Mr. Bilgrey:

Q. Well, may I rephrase the question then, Lt. Sheehan? Did you see any actual act of intercourse taking place?
A. No, sir.
Q. Well, did you actually see seduction, as you understand that word?
A. Well, I think so. When you have a boy stay out all night in her bed and wakes up in the morning in her bed.
Q. Would it make any difference to you if the boy stayed willingly?
A. No. I would still think it was out of order to me.
Q. In other words, the seduction—
A. A man of that age, rather a woman of that age
263 with a boy that age.
Q. Lieutenant, did you see the girl called Vinca in the film disrobe at any time?

A. I don't remember.

Q. Would you say that the sexual intercourse that apparently took place was—

Mr. Hartigan: Between whom?

Mr. Bilgrey: Between Vinca and the boy.

By Mr. Bilgrey:

Q. (continuing): —was purely suggestive?

The Master: Excuse me. Did you say "suggestive" or "suggested."

Mr. Bilgrey: Suggested.

Mr. Hartigan: What do you mean by "suggested," that Vinca suggested it to Phillipe, or that Phillipe suggested it to Vinca?

Mr. Bilgrey: No.

By Mr. Bilgrey:

Q. Would you say that the intercourse took place purely by being suggested to you, and that your conclusion that intercourse did take place was based on that suggestion?

Mr. Hartigan: Do you mean suggested by some-
264 body else; somebody present at the time?

Mr. Bilgrey: No suggestion of dialogue or action in the film other than the actual intercourse.

By the Witness:

A. Dialogue in the film when they spend until daybreak in the hay together.

The Master: At this point, Mr. Bilgrey, maybe it is not necessary for me to say this, but I think the questions in this particular case have to be framed with even greater care than the ordinary case. I am thinking on the point of semantics.

I know that you are trying to.

By Mr. Bilgrey:

Q. I have just one more question, Lt. Sheehan. Did this film arouse your sexual desires?

A. Well, I don't recall.

Mr. Hartigan: You can—

By Mr. Bilgrey:

Q. Well, you have seen the film twice.

Mr. Hartigan: You can take the Fifth Amendment
265 on that.

Mr. Bilgrey: That's not incriminating.

Mr. Mikva: This is a serious question.

By the Witness:

A. I realize that. I am a man sixty-one years old. I don't know. It could have. It could have at the time.

By Mr. Mikva:

Q. At the time you saw it?

A. Yes.

Q. Lieutenant, do you think that it would arouse the sexual passions of other people who were younger or older than you are?

Mr. Hartigan: I object to that. What difference does it make with reference to what he thinks might be in the other fellow's mind. This is not cross-examination.

The Master: Let's have it subject to the objection.

The Witness: Will you read that question, Mr. Reporter?

(The reporter read the pending question to the witness.)

266 By the Witness:

A. I think so.

By Mr. Mikva:

Q. Lieutenant, if I told you that it did not arouse my sexual passions, would you dispute that?

A. No, sir.

Mr. Mikva: No other questions.

The Master: Mr. Hartigan?

Mr. Hartigan: I don't think that there are any other questions.

I just want to make an observation off the record.

The Master: Off the record.

(There occurred at this point an informal discussion, outside the record, which, at the direction of the Master was not taken down by the reporter.)

The Master: I would like to ask Lt. Sheehan a few
267 questions here which I had intended to ask this morning, and which probably won't be quite so valuable, if they have value, this afternoon, because of the further examination and cross-examination. But if you will indulge me, for a sense of clarity, I would like to ask you questions subject to objection, of course.

Mr. Sheehan, I want to say this, and I would like the record to show it, that you as the witness have made a very fine impression on me. I believe that you are sincere, and I have great confidence in your integrity.

I have a daughter nineteen, and when she was still a minor I had to have someone to guard her, I would not hesitate in asking you to do it. And if you had a son, I should not hesitate to leave her with him to guard her.

You may have a lot of trouble in what to read or what to see in the movies in your job.

I am having a little bit of trouble with terms or standards here, and I want to ask you some questions about
268 them, and I want my questions answered as to what you mean, and maybe we can throw a little more light on the powers of the censor board, and particularly on your work there.

All I want you to do is your best in answering them. And you are a policeman, and we are lawyers. If you have any trouble with the words we use, you use your own.

I recall some testimony this morning about pornography and stags and so on, and I know that you are not able to write any dictionary, and neither am I. You know what our problem is here. We want to get the meaning of some of the terms that were used, and we want to get, all of us, as well as we can, some familiarity with the standards which the censor board uses in passing on these films, particularly this film, and which you yourself use insofar as the work that you do, perhaps the writing of these synopses and reports and the making of recommendations and so on, which might influence the decision of the proper city
269 officials on whether or not to issue a permit.

Am I clear up to this point?

The Witness: Yes, sir.

The Master: Now, I would like to talk first about the term "pornograph." And in advance I want to tell you there are three terms that I want to talk about with you this afternoon:

Pornography, Obscenity, and Immorality.

I will go back to them, so you don't have to try to remember too much about it.

Now, I got the impression from your testimony this morning that when you have a pornographic film, neither you nor the censor board has very much trouble or dispute about the conclusion that it should not receive a permit?

The Witness: May I interrupt there?

The Master: Yes, certainly.

Is that so?

The Witness: A pornography picture the censor
270 board never sees, Mr. Master.

Those are obscene, filthy acts of perversion that you couldn't show to five women on a censor board.

We just take those right into court for the judge or the lawyers to dispute it. The judge will ask us to show the picture. But those are absolutely obscene acts of perversion.

The Master: But when you use the word "obscenity" as you did just now, and if there is no objection to my leading here, counsel, when you use the word "obscenity" just now, is that more like pornography than immorality?

The Witness: Yes.

The Master: And you are not talking about the kind of obscenity that might be involved in pictures that are shown by the censor board?

The Witness: No, sir.

The Master: Now, could we work up here between us a definition of "pornography" and "literary obscenity" so that we can understand better these two different operations and situations.

271 Would a fair and clear and sensible definition of "pornograph," as you use it in determining what films a censor board could see and what films you should take right into court, such definition would be something like the exhibition of actual physical sexual acts, not kissing, but the kind of sexual acts that involve the primary—if you don't know what I mean, ask me and I will explain it—and the secondary sex organs, such as the genitals and breasts and so on?

The Witness: Yes.

The Master: Now, when there is an exhibition involving sexual acts involving these organs, whether it be male or female or mixed, do you consider that as a description of what you consider as pornographic?

The Witness: Yes

The Master: Can you add something to it now or qualify it in some way?

The Witness: I think that describes that.

The Master: That is about the kind of censorship that you would use—

272 The Witness: Yes, sir.

The Master (continuing): —in determining—

The Witness: Would not.

The Master (continuing): —would not ever go before the censorship to deny a permit, or you take criminal steps?

The Witness: Yes.

The Master: Now, sometimes you call that obscene?

The Witness: I think the statute describes it as obscene and pornography in the State statute.

The Master: Off the record.

(There occurred at this point an informal discussion, outside the record, which, at the direction of the Master, was not taken down by the reporter.)

The Master: What statute? Counsel would like to know what statute you are referring to?

273 The Witness: I am pretty sure it is Chapter—

Mr. Hartigan: Thirty-eight.

The Witness: Thirty-eight.

Mr. Mikva: 468, Chapter 38 of the Criminal Code.

The Witness: I am not sure.

Mr. Mikva: Of the Criminal Code?

The Witness: Yes, of the Criminal Code.

Mr. Hartigan: What is that that you are talking about, phonography? How do you spell that?

The Master: Pornography: p-o-r-n-o-g-r-a-p-h-y.

Mr. Hartigan: I did not quite get it.

The Master: Pornography.

Mr. Hartigan: Pornography.

The Master: In other words, you meant this morning, when you picked up a stag film or films that they are pornographic?

The Witness: Yes, sir.

The Master: Now, I think you just said that if they are pornographic, of course, they are obscene, is that correct?

The Witness: Yes, sir.

The Master: Now, this word "obscenity" is broader,
274 isn't it? It includes "pornographic"?

The Witness: Yes, sir.

The Master: So that there is an area which is obscene, which, in your opinion, is not necessarily pornographic?

The Witness: Yes, sir.

The Master: Now, let us see whether we can get as good an idea as possible what "obscenity" means, aside from that part which is pornographic. Do you have any idea on that, Lieutenant?

And when I say what it means, I don't mean necessarily what the dictionary says, but what it means to you when you are doing this work for the censor board, or if you know what it means to the censors.

The Witness: Well, we take a girl over in Grant Park or—and take off all her clothes and walk around in the nude, or a boy for that matter—that is obscenity.

The Master: Now, if that were in a motion picture, would you consider it obscene?

The Witness: Yes, sir.

The Master: Under all circumstances?

275 The Witness: Well, you would have to take the whole story into consideration.

The Master: Gentlemen can we agree that Justice Schaefer in 3 Ill. 2d equates the words: "immorality" and "obscenity," and says in effect that they mean "obscenity"?

Mr. Mikva: I think that is what it says.

Mr. Hartigan: It is there.

The Master: Now, these definitions that we have been developing here, are they the words you use wherever you have a problem or to perform duties involving censorship of films?

The Witness: Well, Master, could this be off the record or will I put it on the record?

The Master: It's all right with me to take it off.

The Witness: I don't censor pictures.

Mr. Hartigan: He doesn't censor pictures.

The Master: There has been some evidence—

The Witness: I can't give you the slightest idea how they—what they consider.

The Master: You don't know what their standards are?

276 The Witness: No, sir. I never question them.

The Master: But it seems to me that there has been some testimony that you do some things that—perhaps this is understatement or overstatement—that influence the decision of your superior officers. For instance, you do get up synopses and reports?

The Witness: Yes.

The Master: And you do make recommendations, and in the process of doing that I inferred that you have some standards according to which you make these recommendations.

For instance, you have just testified, if it is pornographic, you say, something has got to be done or not done.

And if there is obscenity, if your judgment is that they are obscene, your recommendation and the things that you put into the report would be affected by your judgment that it is obscene?

The Witness: Yes, sir.

The Master: Now, I am aware that it is a very difficult thing to report for a police officer, or even with the
277 help of a lawyer what we are trying to do here this afternoon. But until counsel tell me that we are wasting time, I would like to put in another five minutes to get something that will help us.

I am mindful of this. This morning a question was asked of you by counsel, I think Mr. Bilgrey, to define certain words—I am sure that Mr. Bilgrey did not mean to be unfair—may be "nude" or "immorality," that came out; but it struck me that they may get you or the rest of us all mixed, and even a reviewing court reading the record might comment: "What are you talking about?"

"Immorality," for instance, might mean one thing in church, or in a discussion of a theft; and it might mean, I think that I can safely say, it means something very different under Judge Schaefer's decision in your work, and it is for those reasons that I am trying here to get some definition, some description of the standards that
278 you and the censor board use in making or in coming to a judgment that a thing is obscene.

Now, if you can't add anything beyond what you have said, well, that's it, because a lot of us act and use judgment on things that we can't explain, and a lot of us do pretty good work without being able to explain. But it just happens that right here in this case that we would try to explain it. If you can help us a little more, all right. If you can't if the parties think it relevant, maybe they will want to add to the definition or include more things, or take out some things.

The Witness: Well, I think the censor board members would be better equipped to answer those questions than I because they come in contact with it day in and day out. They inspect as high as thirty and forty thousand feet of film a day. They would have a better idea on that than I would because the majority of my time is spent in the pornographic field.

The Master: Well, I think you have been very help-
279 ful, Lieutenant.

Mr. Hartigan: Off the record for a moment.

(There occurred at this point an informal discussion, outside the record, which at the direction of counsel, was not taken down by the reporter.)

The Master: Shall we proceed?

Mr. Hartigan: Yes, sir.

The Master: Now, when in the course of your duties, such as in writing a synopsis or synopses or making recommendations, you consider whether a picture should be shown only to adults, and I assume that those situations arise occasionally, don't they?

The Witness: Oh, we have any number of adult pictures that are given adult permits.

The Master: Could you tell us now, to the best of your ability what definitions, standards or considerations
280 you have in your mind in judging whether it should be for adults or for young people?

Mr. Hartigan: Master, may I suggest this at this point? Off the record.

(There occurred at this point an informal discussion, outside the record, which at the direction of counsel, was not taken down by the reporter.)

The Master: What was that last, Mr. Reporter?

(The reporter read the Master's last question to the witness.)

The Witness: Master, I couldn't give you a good answer to that question. I would prefer that one of the censors answer that because they see them day in and day out, and they know what they adult them on.

The Master: Well, I want to thank you very much for helping us, Lieutenant.

281 The Witness: Well, it was a pleasure.

The Master: And I hope you get a good rest.

Mr. Mikva: Could I have the card back, Lieutenant?

The Witness: Yes.

Mr. Mikva: I will see that they get back to you, so that photostats can be made.

The Witness: You have the other one?

Mr. Mikva: Yes, I have the other one, yes.

The Witness: Will you give them back to one of the censors?

Mr. Mikva: Yes, I will give them to one of the censors.

(The witness was excused.)

Mr. Hartigan: Will you call in Mrs. O'Hallaren and Mrs. Joyce?

The Master: Mrs. O'Hallaren and Mrs. Joyce, would you be sworn?

(The Master administered the oath to two prospective witnesses.)

282 JOSEPHINE FRANCES O'HALLAREN, a witness, called on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Mikva.

Q. Mrs. O'Hallaren, would you state your full name for the record, please?

A. Josephine Frances O'Hallaren.

Q. Will you spell your last name, please, for the record?

A. O'-H-a-l-l-a-r-e-n.

Mr. Mikva: May we go off the record for a moment?

(There occurred at this point an informal discussion, outside the record, which, at the direction of counsel, was not taken down by the reporter.)

283 By Mr. Mikva:

Q. Mrs. O'Hallaren, what is your position? What is your occupation?

A. I am a movie censor for the City of Chicago.

Q. How long have you been in that position?

A. Three years.

Q. Three years?

A. That's right.

Q. Is that an appointive or an elective position?

A. Appointed.

Q. Whom are you appointed by?

A. From the mayor's office.

Q. The mayor's office.

What is your annual compensation?

A. Well, we get three hundred and four dollars a month.

Q. And that is a full-time job, as I understand it?

A. That's right.

Q. Nine to five?

A. Five days a week, nine to five.

Q. Five days a week, nine to five.

Who is your immediate superior?

284 A. Lt. Sheehan.

Q. Lt. Sheehan?

A. That's right.

Q. You report to him, or he directs your activities, is that correct?

A. That's right.

Q. To whom are you responsible to ultimately, if you know?

A. Commissioner O'Connor.

Q. Commissioner O'Connor.

Are you employed by the police department?

A. Well, as far as I know, I am supposed to be an employee of the police department.

Q. But you are not a policewoman in that sense?

A. No, I am not.

Q. You state that you are appointed by the mayor, is that correct?

A. That's right.

Q. Mrs. O'Hallaren, prior to your appointment to the police censor board, what was your occupation?

A. Housewife.

285 Q. How long have you been in that occupation?

A. Twenty-five years.

Q. Prior to that what was your occupation?

A. I was an instructor for the Illinois Bell Telephone Company, teaching the operators and training them, and in later years then I became an instructor in health to teach the girls how to preserve their health.

Q. For the Illinois Bell Telephone Company?

A. That's right.

Q. When you talk about training them, what sort of work was that?

A. Training them their actual work, how to operate a switchboard. We were known as instructress, in other words, teachers for the Telephone Company.

Q. How long were you in that position?

A. About fifteen years.

Q. About fifteen years.

Prior to that time what did you do?

A. I went there from high school.

Q. You went there right from high school?

A. Yes.

286 Q. After that you were a housewife for about twenty-five years?

A. When I was twenty-five I was married in 1928, and I became a widow in 1947, and then I went to work in 1952.

Q. Your first job upon returning to work—that was your first job upon returning to the labor market?

A. That's right.

Q. Was that with the police censor board?

A. Yes.

Q. What was your formal schooling?

A. Of course, grammar school and high school.

Q. You graduated from high school?

A. Yes.

Q. What high school was that?

A. Loretta Academy, Sixty-fifth and Stewart.

Q. Is that a parochial school?

A. Yes, sir, it is a girls' school.

Q. A girls' school?

A. That's right.

Q. What would be the grammar school? Where did you go?

287 A. Well, that was in St. Louis, because I am from St. Louis. That is a parochial school, too.

Q. That is a parochial school, too?

A. Yes. Sacred Heart.

Q. Was that also for girls?

A. No, sir. Oh, no. Co-ed.

Q. Now—

Mr. Hartigan: Would you like to remove your coat?

The Witness: Yes.

We are back in school days.

By Mr. Mikva:

Q. We are going all the way back, I am afraid. Now, do you have any children, Mrs. O'Hallaren?

A. Five.

Q. Five?

A. Yes.

Q. What literature courses did you take during your schooling that you can recall?

A. Well, in high school we studied Macbeth and Hamlet, Tale of Two Cities, and different plays; I just can't recall them now.

288 Q. This was in high school?

A. In high school.

Q. Approximately how old were you then?

A. Sixteen. Well, I didn't graduate at sixteen. I was seventeen when I graduated.

Q. So that at about the time that you were reading Hamlet and Macbeth you were sixteen or seventeen, is that correct?

A. Yes.

Q. Did you take any courses after you finished at Loretta—literature courses of any kind?

A. No, I didn't.

Q. Have you ever written professionally?

A. No.

Q. Written stories of any kind?

A. No.

Q. Have you ever written for publication of any kind?

A. No.

Q. Have you ever written book review of any kind?

A. No, but I have attended many.

Q. By "attended" do you mean discussions on
289 books?

A. Yes.

Q. Could you just give me a sample of what kind of books were reviewed at those sessions? Were they classics or modern literature, modern novels, fiction, non-fiction?

A. Well, Midnight—Midsummer Night's Dream. We had to discuss on that, and I just can't recall the books we would have. That was before I went to work, and when I had a lot of time.

Q. That was before you returned to work with the censor board, is that correct?

A. Yes. We belonged to civic groups. We used to go outside, to Beverly Theatre.

Q. What is the name of the civic association?

A. Foster Park Women's Club.

Q. Do you read the book review section in the newspapers?

A. Yes, I never miss them.

Q. Sunday Review?

A. Yes.

Q. You try to keep up in current literature?

A. Yes.

290 Q. Do you read movie reviews?

A. I always do.

Q. In the Chicago papers?

A. Yes, I am very interested in it; I naturally would be.

Q. I would assume so.

Do you read the movie reviews of any other cities?

A. (There was no response.)

Q. Do you receive any other newspaper to which you have access?

A. No, I don't.

Q. Do you have access to newspapers in other towns?

A. No, I don't.

Q. Do you read trade publications, such as Variety or Film Daily?

A. No.

Q. Do you read moving picture publications?

A. (There was no response.)

Q. Do you read moving picture show publications?

A. Do you mean in the Tribune?

Q. No, no. I am talking about three separate
291 publications.

A. No.

Q. Variety or Film Daily?

A. No.

Q. Motion Picture Daily?

A. Sometimes, the less you know about it before you review the picture, I find it better to read about it later, so I don't go into it. I try to read after we review the picture to see how my judgment came out with some critic. But I don't read too much before. I don't go in for that because I would like to see the picture to my way and enjoy it and censor it, and then I am going to do it from my thinking. Then I am going to check to see how close I came.

Q. All right. Do you read these publications after you review?

A. Yes.

Q. You are referring to this Film Daily?

A. They come out in the City of Chicago after we have seen it.

Q. I am talking about—I am not necessarily talk-
292 ing about the Movie Review. I am talking about reading trade publications?

A. No.

Q. Which are called Variety, Film Daily and Motion Picture Daily. Have you ever read those?

A. I don't.

Q. Do you subscribe to any of the literary magazines, such as the Saturday Review of Literature?

A. No.

Q. Or anything like that?
A. No.
Q. What magazines do you read?
A. My son gets Time.
Q. Time magazine?
A. Yes.
Q. Any others?
A. Well, Ladies Home Journal. I don't know if it would be of interest to you, but we love it.
Q. We are very interested here in everything, Mrs. O'Hallaren.
Do you read all four Chicago newspapers?
293 A. Yes, sir; yes, sir, I do. I just read everything in it. I love them.
Q. The book reviews, movie reviews?
A. Yes.
Q. But no out-of-town newspapers?
A. No.
Q. Do you speak any foreign languages, Mrs. O'Hallaren?
A. No.
Q. Do you speak French?
A. I studied Latin in high school.
No, I don't think that I could even quote it now. That is the only language that I ever studied.
Q. So you don't speak or understand French in any way?
A. No, sir.
Q. Now, trying to get back to your job a little bit. When you see a movie in terms of censoring it, I gather from what you say that you try not to have read or heard anything about the movie before it comes up?
A. When I say I try, I don't go out. Just if I
294 see something I would pick it up. As a rule, we don't see a thing. After I finished I will look around and see if I can get some literature on it. Then I enjoy it, because I want to test myself out.
Q. When the movie The Game Of Love, which is the subject matter of this suit, was presented you were aware of who wrote the original book that the movie was adapted from?
A. No. I am just trying to tell you the truth. I knew nothing about the movie. I knew nothing about the producer or writer nor owner of the picture. It doesn't mean a thing to me.

Q. When you found out that this was written by Colette did that mean anything?

A. No.

Q. Have you ever read any of Colette's works?

A. No.

Q. Do you know who she is?

A. Well, I couldn't go into detail on it, no.

Q. Have you ever heard of it previous?

A. Yes.

Q. That is, I mean the writer, Madame Colette?

295 A. Yes.

Q. Yes? In what connection?

A. I just heard of her as a writer, but I never—

Q. Did you know whether she was a contemporary writer?

A. No.

Q. Or one of another period?

A. No.

Q. Do you know whether she is alive or dead?

A. No, I never went into her life at all or anybody. She really doesn't interest me.

Q. But you have never heard anything else about her?

A. No.

Q. Are you aware that her books circulate freely in the public libraries in the City of Chicago?

A. No.

Q. Does that surprise you?

Mr. Hartigan: I object to that, if the court please. I don't know that they do circulate in the public libraries. He makes an assertion that they do.

296 The Master: Would you read the question again, Mr. Reporter?

(The reporter read the pending question.)

By the Witness:

A. No.

Mr. Hartigan: That is all right. She is not aware. But I just wanted to call the Master's attention to it.

The Master: Then you withdraw your objection?

Mr. Hartigan: Yes, I withdraw my objection.

By Mr. Mikva:

Q. Would it surprise you if I told you that they circulate freely in the City of Chicago?

A. No, I guess not.

Q. Would it be a surprise to you if I told you that her books are accessible to children?

A. Well, I remember I said I didn't know anything about her books.

Now, if this is one of her books that they have here, the picture that I saw, that would surprise me. And
297 remember every book is different. Maybe her other books would not be as the picture I have seen.

Naturally, her books would be different; they would not be all alike; that's for sure.

Q. Now, you stated that you read Hamlet?

A. Yes, I remember, that was in school our book.

Q. Have you had occasion to look at it again recently?

A. No.

Q. Do you recall the language that Hamlet uses to his mother when he upbraids her for being untrue to his dead father?

A. No. That is too far back for me to go into that.

Mr. Mikva: May we go off the record for a moment?

The Master: Yes.

(There occurred at this point an informal discussion, outside the record, which, at the direction of counsel,
298 was not taken down by the reporter.)

By Mr. Mikva:

Q. Were you on the board when the movie Hamlet was approved by the City of Chicago? Do you remember seeing that movie as a part of the censor board?

A. No, I do not.

Q. Did you ever read The Scarlet Letter while you were in high school?

A. No.

Q. Are you familiar with the story?

A. No.

Q. Would you say that your taste in literature tends toward the classics or non-classics?

Mr. Hartigan: Now, Master, I would like to interpose an objection again to this line of questioning. I think that it has gone pretty far. I don't know what purpose counsel has in expanding it any further.

I think it gives the Master a fair idea of the literary attainments of the witness, if that is what his pur-
299 pose is.

Mr. Mikva: This leads up to with reference to a

question that was asked Lt. Sheehan this morning with reference to plaintiff's exhibit 13.

Mr. Hartigan: Why don't you ask her about it; if it is in exhibit 13 it is unnecessary.

Mr. Mikva: You made your objection. I am trying to get at her understanding of the word "classics."

The Master: This is off the record.

(There occurred at this point an informal discussion, outside the record, which, at the direction of the Master, was not taken down by the reporter.)

The Master: It may go in then subject to the objection.

Mr. Mikva: Would you repeat the question, please, Mr. Reporter?

300 (The reporter read the pending question.)

By the Witness:

A. Well, I think I could enjoy both. I can enjoy either book, if I have time to read it, and I think I could enjoy either book.

Q. Would you name some books that you consider classics or some authors that you consider classical authors?

A. May I ask what that has to do with me as a censor?

Q. Mrs. O'Hallaren, I am sorry, but I prefer not to answer that question, because that is what Mr. Hartigan has just objected to.

A. Well, I will answer everything that you want to know about the picture.

Q. Do I understand, then, that you refuse to answer?

A. No, I don't refuse. I have to know why you want it. It happens to me that I am that type of person.

Q. I am certainly not trying to trap you. We are trying to get at the standards that you applied and the
301 other members of the censor board in accepting or rejecting pictures. As I stated at the beginning, no one that is here has any intent of ridiculing you or embarrassing you or your taste in literature. We are here solely concerned with standards that you applied in passing on movies.

And these questions are, in my humble opinion, the way to get down at the standards you applied. That is my way of getting at it with specificity.

A. I will repeat: I enjoy both, and I can read both, and I can read both and understand them and enjoy them.

Q. Would you say that Shakespeare is a classical author?

A. (There was no response.)

Q. Would you say that Shakespeare is a classical author?

A. Yes, I would say that he is.

Q. Would you say that Thomas Hardy is a classical author?

A. I answered one. Isn't that enough?

302 The Master: Mrs. O'Hallaren, you have a very difficult job here, too; we understand that. Lt. Sheehan has had a tough job being a witness here. It is something that is not easy.

The Witness: I am not a college graduate. I told him that I am a high school graduate, and that's it.

The Master: Let me finish, Mrs. O'Hallaren, and we will all get along better. We all have trouble repeatedly in the course of this proceeding understanding why certain questions are asked. But the only thing that we can do is follow the rules of law: one of them is that your counsel, the counsel for the City, who is a very able counsel, in my opinion, has the right to object, and as soon as he does that, don't say another word until I rule whether or not you should answer.

Now, even though I rule that you should answer, if you have doubts, and if you will indicate that, I will let you talk to your own counsel, and he will advise you whether you should.

303 Mr. Mikva: Mr. Hartigan has a standing objection to all of these questions. The question of whether they don't have anything to do with this case is something that we have to argue out later. He has made a standing objection.

Mr. Hartigan: I made an objection to your questions so far.

Mr. Mikva: And that it continues to the entire line of questioning.

Mr. Hartigan: It continues, as you say, on the entire line.

If the Master rules, you must answer the question subject to my objection, Mrs. O'Hallaren, so that there is nothing else for us to do but to answer the question to the best of your ability.

If you don't know the man or the author that counsel

is talking about, it is no disgrace to tell him that you don't know.

Mr. Mikva: Would you repeat the last question, Mr. Reporter?

304 (The reporter read the pending question to the witness, as follows:)

"Question. Would you say that Thomas Hardy is a classical author?"

By the Witness:

A. I don't know.

By Mr. Mikva:

Q. Would you say that Guy de Maupasant is a classical author?

Mr. Hartigan: Well, now, if the Master please, again let me interpose here. I think that this examination is unfair to the witness.

Counsel, I think should be required to define what he means by "classical authors" and what he does not mean by "classical authors."

The Master: Can we go off the record for a moment?

Mr. Mikva: Surely.

(There occurred at this point an informal discussion, outside the record, which at the direction of the Mas-
305 ter, was not taken down by the reporter.)

Mr. Mikva: On the record.

By Mr. Mikva:

Q. Returning to the question, I believe you were asked whether he was the fellow that wrote the movie that was previously rejected?

A. Yes.

Q. He wrote short stories out of which Le Plaisir—pardon my French—was made.

A. Yes.

Q. Would you consider him a classicist?

A. Well, yes, in a way.

Q. You would?

A. Yes, in a way.

Q. Now I would like to show you plaintiff's exhibit 13, which is a report that Lt. Sheehan submitted on the film Le Plaisir. Had you ever seen that before?

A. Yes, I saw it.

Q. I mean, that exhibit?

306 A. Oh, no, no.

Q. Would you read it, please?

A. (The witness referred to a document.)

Q. Do you agree with what is stated in there regarding that picture?

A. I rejected it.

Q. You rejected it?

A. Yes.

Q. Do you agree that it did not have any entertainment value?

A. Well, now, that picture was away back. I looked that up two days ago. We saw that July 16. So before I could say anything about that picture I would have to get my notes because you couldn't expect to remember that picture since July 16, and say something honestly about the picture.

Q. Would it be of any assistance if I show you plaintiff's exhibit 14—correct me if I am wrong—which is your synopsis of that picture (handing a document to the witness)?

A. Well, this is the synopsis of the picture.

Q. Did you make that synopsis?

307 A. Yes, it is my card.

Q. You made that synopsis, is that correct?

A. Yes, this is the way I saw the picture.

Q. Does that refresh your recollection about the picture?

A. Yes.

Q. Well, would you state at this time whether it had any entertainment value?

A. Well, I would have to look at it again; I have forgotten it.

Q. Excuse me. I would like you to look at both of these (handing documents to the witness).

A. I thought we were here for another picture.

Well, this is not enough for me to comment on this picture right now. I would have to look at the picture.

Q. Do you have your notes there?

A. Well, that was July 16, and you see, this book runs to a certain date. Now, my last date on this book, as you can see here (indicating), is July 11, and I don't have the other book with me.

308 Q. This would go back before that book?

A. Yes. It would show the date and the name of the picture, the time, a little short synopsis of the picture,

if it is a picture that you want to remember something about.

This is July 11, my last date.

Q. Well, now, Lt. Sheehan has testified that he did not see the picture Le Plaisir.

A. I could not say that.

Q. Now, in the normal course of events, when a picture is rejected, do you discuss that with Lt. Sheehan what the picture is about; so that he can write such report?

A. No.

Q. I am talking about re-rejection, on the second time that it is submitted.

A. We never discuss anything with the Lieutenant. We give what we think, and then he carries on from there.

Q. Now, is any of the language in here, in this plaintiff's exhibit 13, your language, if you can recall?

A. Well, now, you have mine there on that card.

309 You can compare it.

Q. That is not the Lieutenant?

A. That I don't know nothing about it.

Q. You don't know nothing about it?

A. No.

Each one takes her own date to write a card. That happened to be mine, and that is my synopsis on that card.

Q. It also states in here on your card, plaintiff's exhibit 14, that "it shows a low light respect for religious ceremony in the picture." Do you recall that?

A. Back to July 16, I don't remember that picture.

Q. If you can't answer the question, you may say so.

A. No, I can't. But I have that in my notes; like I say, I have notes on this picture in this book.

Q. Let me ask you this question:

Is that one of the standards you apply in deciding whether a picture should be rejected—

A. No.

310 Q. (continuing): —or accepted?

A. No. Religion never enters in my decision.

Q. It never enters into it?

A. No.

Q. Were you present on the film censor board when the film entitled The Miracle was banned?

A. Yes.

Mr. Hartigan: I object to that. He is going into The Miracle.

By the Witness:

A. Yes, yes, I saw The Miracle.

By Mr. Mikva:

Q. And you were on the censor board when that was first presented, is that correct?

A. Yes.

Q. Am I correct in saying that if was originally rejected by you on religious grounds?

A. No.

Q. What would be the original grounds on which it was rejected?

A. Now, if you want my record, I have my notes. I would not testify—I am here under oath—and I
311 would not say anything unless I can read from what I know.

The Master: Mrs. O'Hallaren, may I suggest, to shorten up the record— for the court reporter here makes so much money— that you simply say that if I had my notes I might be able to help you.

The Witness: O. K.

By Mr. Mikva:

Q. Now, turning to the picture The Game of Love, do you think that that picture had any entertainment value?

A. I do not.

Q. You do not?

A. No.

Q. Did you dislike the picture?

A. I never dislike a picture.

Q. Did you like it?

A. I will answer you this way: This picture, if I went to pay to go to see it, because of the fact I would have to pay my admission, I didn't enjoy the picture enough to say that I would come out and say "I enjoyed it." I enjoy pictures.

312 Q. Approximately how many pictures do you see that you like?

A. Nearly all of them. I love my work.

Q. You really like them?

A. Yes.

Q. Is it fair to say this, Mrs. O'Hallaren, that either consciously or subconsciously, the question of whether you like or dislike a movie enters into your decision?

A. No.

Q. You would say that is not so?
A. No.
Mr. Hartigan: Do you mean, Mrs. O'Hallaren, that that is not so?
The Witness: That I am not judging a picture from the way I like it or dislike it. I judge a picture as a censor.
By Mr. Mikva:
Q. So that the fact of whether a movie had or did not have entertainment value would not enter into your decision, is that right?
A. Well, when I review a picture, I am not just
313 looking from the entertainment field; I am thinking of every angle of what I see there.
Q. But does entertainment value enter into your decision one way or the other?
A. Well, yes, because I think that is what movies are for.
Q. To entertain?
A. It is entertainment. You go to see a movie for entertainment, but there are other things in a picture that you like if there is entertainment.
Q. Surely. But if the picture were not entertaining, that would influence your decision?
A. No. I would go to see educational pictures or a tour.
Q. Assuming that a picture were on the borderline— and I appreciate the difficulty of your position— many of the pictures that come up are borderline that they might be passed or rejected?
A. Yes.
Q. Surely.
Assuming that a picture were on the borderline, and it had, from that point of view, entertainment value,
314 would that influence you to pass it rather than to reject it?
A. Yes, because I am of a broad-minded nature.
Q. If it had no entertainment value whatsoever— it was just a complete bore, and it was on the borderline— would that influence you to reject the picture?
A. If it wasn't a plot, it makes me reject. It is the plot or what is the story is what I think makes a movie, and the entertainment values, for which, if it has a plot, that makes your picture.

Mr. Hartigan: Are you satisfied with that answer to your question?

Mr. Mikva: No, I am not, but I will try to propounded another question.

By Mr. Mikva:

Q. Well, then, in case you don't have any plot, a picture was in very questionable taste, would really be on the borderline, between acceptable and not acceptable, and it happened to have a plot, and it made no sense to you; it didn't have any entertainment value. Would the
315 fact that it made no sense to you or did not have any entertainment value influence you in deciding whether it should be accepted or rejected?

A. No.

Q. Even if it were complete gibberish?

A. That would make it one of the reasons; it would not be the basis for rejecting.

Q. You say it could be one of the reasons?

A. It could be one of the reasons.

Q. The fact that it did not make any sense to me and did not have any entertainment value?

A. But I wouldn't reject it.

Q. Not solely, but it could be one of the reasons?

A. It could be one of the reasons.

Q. Again returning now to The Game of Love, you stated that you did not find the picture entertaining. Do you think it might have been more entertaining if you understood French?

A. No, that never entered my mind. I just knew it was a French picture. But as far as knowing anything about French, that had nothing to do with it.

316 Q. You would not have liked it any better if you understood French, as far as you can tell?

A. No.

Q. Do you think that The Game of Love had a plot? Do you think that there was a plot to the story, to the picture?

A. No.

Q. It had no plot?

A. No.

Q. Do you think that The Game of Love had a moral?

A. No.

Q. Do you think that it depicted any part of life as it really exists?

A. No. I thought it was very unnatural picture.

Q. Mrs. O'Hallaren, Lt. Sheehan stated earlier this afternoon that— and he stated this in his report, I believe, that Vinca, the girl, the young girl in the picture, indicated to the boy that she would have had— she would have desired sexual relations with him.

And Lt. Sheehan said she was sex-minded; Vinca was sex-minded.

Do you think that she was sex-minded?

317 A. It grew on her, yes, as the picture went on; it grew on her. And the little girl was very willing to give everything in the sex life when she thought that she was losing the love of a little boy.

Q. And do you think that is normal or abnormal to be sex-minded at fifteen?

A. Well, after all, we are all human, and there may be a little sex there some places. But you see things like that brings it out.

There is a sexual impulse there. When you go to a movie and see this there, I can't say that it has no part in all of us, because we are human, and there is a time and place for all of it. But this little girl was fifteen.

Q. Would you say the fact that she was fifteen, would you say that in a fifteen-year-old girl that being sex-minded is normal or abnormal?

A. Sex is a beautiful thing if it is handled correctly.

Q. We are talking about a fifteen-year-old girl that 318 is normal. Would you say that sex is abnormal in her?

A. The girl in the picture, it wasn't right for her to be as sex-minded at fifteen.

Q. As she was?

A. As she was in this picture.

Q. Now, you did not think it was right—is that what you said?—for her to be that sex-minded at fifteen?

A. I would say that it was unusual.

Q. Unusual?

A. Another thing, if you will allow me to say this.

Q. Surely.

A. This little boy or girl had no supervision from the mother and father, and that was the beginning of the trouble.

The mother and father, if you will allow me to state my view, were more interested in their canasta cards; I don't know what they were playing.

They even said that they were so close together; they acted like brother and sister.

319 And he also, the little girl or the boy, I can't remember which now, which one said it, but one said to the other, "We are free; we are for love."

I think that—I may not be quoting it exactly. "Our parents leave us alone. We are in love."

So, to my way of thinking, if the mother and father, who were at the summer resort, could have watched them a little bit, the two children would not have gotten away off so far.

Q. Supposing Colette, the authoress of this movie, had changed the story, and there would have been closer supervision by the parents, do you think that that might change your decision on the film?

A. Well, children may start out that way, but that they could have been checked through supervision; they might have gone that far.

Q. If there had been closer supervision?

A. They would not have gone that far.

Q. Do you think that that would have changed

320 your opinion of the film?

A. No, because there are other parts of the film we have not touched.

Q. Would that have influenced you at all if there had been closer supervision?

A. No, because it could go along—it would be more unnatural.

Q. Now, turning to the first scene, Mrs. O'Hallaren, what did you see in the first scene?

A. Well, if I remember correctly, may I refer to my notes?

Q. Sure.

A. Because I saw this June 15.

A naked boy laying on the beach—and this was written June 15—naked boy laying on the beach, running from one place to another stark naked.

I got that word "stark" from the dialogue.

Just carrying a hat, and I think, if I remember correctly, he was carrying a girl's hat that he had picked up on the beach, that he had that.

Some girls were in the crowd; they had dropped a

321 hat, and he picked it up.

So he is in that state.

The little girl, after she knows about this, goes to rescue him from his nudeness. She says everyone has seen him already.

He said, "Well, we will have a bicycle marriage later on."

I don't think that you can follow it this way.

Q. Did you see his private parts during that first scene?

A. Well, as I remember very distinctly, his rear view. Now, I can't say that I saw the private parts because if they were there I didn't happen to see them. But I distinctly saw the full-length nude body from the rear.

Q. In other words, you saw the backside?

A. That's right.

Q. Now, did you find that scene objectionable?

A. Yes.

Q. You did?

322 What other scenes did you find objectionable?

A. Well, as we go into the picture—

Q. May I say this? Let me strike that question. I think that this will be a little more chronological.

A. Yes.

Q. Now, after you viewed that first scene did you decide at that point that the picture could not be seen?

A. No, it is not. That can always be cut to save a picture. I didn't think that, because you could hardly judge from that. You have to get the whole.

Q. After you were through watching the picture, did you decide that that was just not fit?

A. After the whole picture was over?

Q. Yes, after the whole picture was over.

A. Yes, I did.

Q. Did you think it was offensive to standards of decency?

A. Yes, I did.

Q. Did you think the dialogue was unfit?

A. Yes.

323 Q. Did you think it was obscene?

A. Yes.

Q. Did you think it was immoral?

A. Yes.

Q. Did you think it was pornographic?

Mr. Hartigan: Do you know what he means by "pornographic"?

The Witness: No.

By the Witness:

A. I answered to everything; I said, "Yes."

On this, what does he mean?

Mr. Hartigan: I don't know.

By Mr. Mikva:

Q. Well, whatever you mean by it.

A. I didn't answer you yet.

Q. In your definition of the word "pornographic" or "pornography," do you think that this film came within that definition?

A. What is your definition?

Q. I said within your definition.

A. I have none.

Q. You have none?

Mr. Hartigan: No.

324 By Mr. Mikva:

Q. Do you know the meaning of the word "pornographic"?

A. No.

Mr. Hartigan: That is why I ask.

By Mr. Mikva:

Q. Do you know the meaning of the word "obscene"?

A. Yes.

Q. What do you mean by the word "obscene"?

A. Well, obscene is—it is lustful; it brings lustful ideas to your mind, anything obscene, and it is, and it might rule to arouse sex, because, in other words, it is something that just is not nice to look at. It might bring out evil, that, after all, we are human. It might bring in evil, cause lust.

Q. What do you mean by "immoral"?

A. Well, anything that degrades.

Q. Degrades?

A. Yes.

Q. Degrading influence would be immoral?

A. Yes.

325 Q. Would you use the two words differently?

A. No. "Obscene" and "immoral" seem to go together.

Q. What do you mean by "offensive to standards of decency"?

A. Offensive? If I recall, this boy '9, was it, this

younger boy that I saw in the movie, and I saw this woman forty years old with this boy in bed—that is offensive.

As an adult, I was ashamed we had to have men on the board; I was ashamed of the men sitting next to me. I am a mother, and I have seen lots of things. I am a mother of five children. I felt a little out of place seeing a woman forty years of age with this boy sixteen years in the bed.

Q. You would say that it was offensive?

A. Yes. It was more than offensive.

Q. Disgusting?

A. Yes, unnatural.

Q. Did it arouse your sexual instincts, Mrs. O'Hallaren?

A. No. But after all, this is my work, and I see
326 it every day; I am used to this. But three years ago, before I was a censor—

Q. It might have—

A. (continuing): —it might have bothered me.

Q. When you say "bothered," do you think that that would have aroused your sexual instincts?

A. Yes, I think I would have walked out.

Q. Well, just a minute. You would have walked out?

A. Yes.

Q. Would that have been because it was offensive or disgusting or because it was arousing your sexual instincts?

A. Everything as a whole.

Q. Do you think it would arouse the sexual instincts of anybody that saw it that is not used to it?

A. Yes, sir.

Q. If I told you that it did not arouse my sexual instincts, would be a surprise to you?

A. I don't know you.

Q. If I told you that it did not arouse me sexually—
327 A. I was a little embarrassed. We all have a certain sense of modesty. You just don't feel ladylike.

Q. Is that the same thing as sexual instincts, sexual modesty?

A. No, no, no.

Q. If I changed those questions to use the words "sexual desires" rather than "sexual instincts," would your answers be the same?

A. My, you are really going—oh, brother!

Q. Would your answers be the same if I used the word "desire" rather than "instincts," would your answers be different to the last series of questions?

Mr. Hartigan: If you don't know, say so.

By the Witness:

A. We are all different. It may arouse me, and maybe the next person it would bother terrifically; and me as a censor, I am responsible for this person that it does not happen.

Q. You have the responsibility that his desires are not aroused?

328 A. As a censor, yes.

Q. Do you recall the scene with or rather where the door knob was turning?

A. Yes.

Q. Did you find the door knob offensive?

A. Well, not the door knob itself, but what you knew was going to go on behind.

Q. What you knew or what who knew?

A. Well, I mean, I know that as I would see a picture, and I am watching what happened before.

Q. What did you decide happened when the door knob turned?

A. Can I be very frank?

Q. Yes.

A. That she and the little boy had an affair, because the boy has a bitten mark on his neck after she bites him.

Q. When you say that "they had an affair," do you mean sexual intercourse?

A. Illicit affair.

Q. Let's drop that word. Then, do you know that they had sexual intercourse at the time?

A. Yes.

329 Q. Do you see the sexual intercourse?

A. No.

Q. What did you see in that scene?

A. Picture, you have of a door closing.

Q. What did you see in the door, with the door knob closing? There is a change of scene?

A. I am telling you. I remember the lady—a woman, I will call her, not a lady— the way she closed the door, and the boy was inside, and the door knob turns.

And then, if I remember correctly, later, then we see the boy in a very lavish robe that was about— I don't know if it is before or after he has her robe— his clothes are not on. He has a robe there. He must have taken his clothes off for some purpose. They are in the same room.

Q. Could they have taken a bath?

A. Which, if I remember correctly, he does. Does he take— I have forgotten that part of the picture.

Q. Did he take a bath?

330 A. I don't know definitely if he takes a bath. May be he takes a bath. But they don't picture he shared the bed with her.

Q. You did not see sexual intercourse, did you?

A. No.

Q. Did you see them in bed together?

A. You see the boy in bed and is covered, I believe, and she is on the other side of the bed.

Q. But she was not under the covers at the same time he was, is that correct, as you recollect it?

A. Well, I can't answer that. I don't remember. I can't say just that point. I just have notes.

Q. Did they ever say that they had sexual intercourse?

A. "Well, I am here, You go along. I prefer giving in place of receiving. If you return it, if you return it, it must be with open hands."

She calls him a little beggard.

"You could give in. You could give me something, little beggard. You don't know what you can give me."

331 And she says that women have little whims.

She told him that he was her souvenir of the beach.

His own little girl friend said, "I will never be first in anything," at the end of the picture.

Q. All of this you relate would indicate that he had sexual intercourse with the woman?

A. Yes, the part about the souvenir.

Here's one thought that I would like to leave: At the end of the picture, for the effect it has on you, I mean there is nothing at the end of the picture.

This women closes up her beautiful home, goes back to her city home. She will be all ready next summer to do the same thing. There is nothing that happens to the little boy or girl.

Q. If I told you that some critic or reviewer said that this was a piece of poetry, this movie, would you disagree?

A. Well, I have studied poetry, but I never

332 knew poetry, of any poetry like that. To me, if it is poetry, to my way of thinking of poetry, it is not good poetry.

Mr. Hartigan: Mrs. O'Hallaren, just answer the question.

Will you repeat the question to the witness, Mr. Reporter?

(The reporter read the last question to the witness.)

Mr. Mikva: I am satisfied with the answer.

The Master: He can ask her again.

Mr. Mikva: Surely. You will have her, Mr. Hartigan.

By Mr. Mikva:

Q. Mrs. O'Hallaren, if I were to characterize the movie as a tender description of the growing up process, would you agree?

A. To all but the word "tender."

Q. Do you agree that it is a description of the growing-up process?

A. No.

Q. It is abnormal, the growing-up process, isn't it?

333 A. Yes, abnormal.

Mr. Mikva: Your Honor, I am afraid we are not through with Mrs. O'Hallaren.

Mr. Hartigan: Mrs. O'Hallaren, you come back tomorrow.

Mr. Mikva: No, Friday.

Mr. Hartigan: Friday.

Mr. Mikva: Would nine-thirty be all right?

The Witness: Yes.

Mr. Hartigan: Nine-thirty, all right.

Mr. Mikva: How about the other three? Could you tell them that we will want them on Friday?

The Witness: Shall they come?

Mr. Hartigan: Yes.

The Master: Show an adjournment, Mr. Reporter, to Friday morning at nine-thirty.

(Whereupon the hearing in the above-entitled cause was adjourned to Friday, October 7, 1955, at the hour of nine-thirty o'clock a.m.)

* * * * *

337 And thereupon the following further proceedings were had herein:

The Master: Do you want me to swear all the other witnesses?

Mr. Hartigan: Yes.

The Master: Will you three ladies, who have not been sworn, raise your right hands?

(The Master administered the oath to three prospective witnesses.)

JOSEPHINE FRANCES O'HALLAREN, a witness, called on behalf of the plaintiff, having been previously first duly sworn, resumed the witness chair, was examined, and testified further as follows:

Direct Examination by Mr. Mikva (Continued).

Q. Mrs. O'Hallaren, you are the same Mrs. O'Hallaren that previously was sworn and have given testimony in this case, is that correct?

A. I am.

Mr. Mikva: May the record show—I don't
338 think it showed that I mentioned this before—that Mrs. O'Hallaren was called by me pursuant to Rule 43(b) as an officer and employee of the defendant City of Chicago, adverse to the interests of the plaintiff?

By Mr. Mikva:

Q. Mrs. O'Hallaren, on Wednesday you mentioned to me in the testimony that in high school you had read some of Shakespeare's works, is that correct?

A. That's right.

Q. You mentioned that you read Hamlet, is that correct?

A. That's right.

Q. I believe you also mentioned that you were about sixteen or seventeen years old at that time?

A. That's right.

Q. I would like to read you a litle bit of Hamlet appearing in Act— the last scene of Act III—

Mr. Hartigan: Mr. Mikva, I understand all my objections stand—

Mr. Mikva: Stand.

339 Mr. Hartigan (continuing): —to this entire line of question? All right.

By Mr. Mikva:

Q. (continuing): —in which Hamlet says to his mother, the queen:

"Let bloat king tempt you again to bed,
"Pinch wanton on your cheek, call you his mouse,
"And let him, for a pair of reechy kisses,
"Or paddling in your neck with his dam'nd fingers,
"Make you ravel all this matter out."

Do you happen to remember that quotation at all?

A. No, I can't say that I remember it.
Q. Would you like to read it?
A. I understand just what I read.
Q. Do you understand what I read to you?
A. Yes.
Q. Do you think that is obscene?
A. Well, in a classroom when you are studying
340 a classic like Shakespeare, and you have the teacher, who is your guide, and you are going into detail on what you are reading— to me at that time it probably will be all right in its place in a classroom, because we are all at the same age, and it is presented to you in the proper manner.

So reading it from Hamlet, what you just read, I don't approve of.

It is not standards of the way of living. But in the story Hamlet we had to accept it as a Shakespearan play and as a study in one of the classics.

Q. Do you think that is the kind of thing that should be read by a sixteen— or seventeen-year-old girl?
A. Under the proper and wise guidance and in the proper manner.
Q. It is all right?
A. But not in the form of entertainment.
Q. If those words appeared in the movie of Hamlet, would you think it were obscene?
A. Well, the plot of Hamlet— you have to consider the other parts of the classic.
341 Q. Well, now, as I understand your powers, you have the power to recommend a cut of a particular part—
A. That's right.
Q. (continuing)— of a play?
A. That's right.
Q. Now, if the movie Hamlet contained these words, would you recommend a cut of those words?
A. Well, if it would not spoil the continuity of the theme, just the few lines that you read there perhaps would not spoil; I mean from a cut. I can't say. I mean, I would have to go further on into the story.
Q. Do you think it would have been a better story if the author left those words out?
A. I can't say.
Q. You say those words are pretty vulgar, wouldn't you?

A. Well, you are getting away from what I was talking about. There is a plot to every movie or every story there is a theme. When you are following that, why, it probably has a different appearance.

342 Another thing. This is in the classroom where I studied this with a teacher who is presenting it in proper fashion.

Q. Let us assume we are not in a classroom; let us assume that we were perhaps in some movie that has this film.

A. It depends on the theme or plot or what good comes out of it later, when I left the theatre how I felt after I had seen the whole play.

Q. And would you say that there are different rules for classics and for non-classics, as we agree and as we understand? Would you say that Shakespeare is a classic; is that correct?

A. Yes.

Q. Would you say that different rules apply to classics than apply to non-classics?

A. Well, a classic is accepted by the standard of excellency, and it is considered to be of some very high standard.

Q. Who considers it to be that?

A. When I say "they," I imagine people as a whole, as a nation.

343 Q. Well, now, has Shakespeare ever been put to a vote of the people?

A. No.

Q. Well, who, do you know?

A. Well, we consider him an outstanding man.

Q. Whom do you consider? Do you consider him an outstanding writer?

A. Yes. I think a classic is outstanding.

Q. Can you define classic for me?

A. Yes, a classic is a work accepted by the standards of excellency.

Q. Well, now accepted by whom?

A. By people of—by us as people.

Q. By all of the people?

A. Well, I can't answer that. But I never heard anyone really talk against Shakespeare.

I understand that just certain parts of his writing may be a little shady.

Q. A little shady?

A. Well, that part right there (indicating), we would say is shady; it is not the best taste. It is not presented in the right way, and a right group, as I said, as a
344 teacher presenting that to be as a student, I see nothing wrong with that.

Q. Do you think that teachers have a great deal to do with deciding what are classics and what are not classics?

A. Well, now, well, it is presented to them.

Q. Who do you think presents it to them?

A. Well, authors, by the authors.

Q. Would you say that book reviewers, people who review those books and people who comment upon books and people of literature, would you say that those people help to determine what is a classic and what is not a classic?

A. No, I don't think so. I think people of high standards of learning.

Q. Well, would not those include people of literature, writers, teachers?

A. Yes.

But sometimes a book reviewer is not—she might have just taken it up as a hobby. I mean if I got a book review that would not mean that we ought to be in a position to say that it is a classic. It is their hobby.

345 Q. Other writers certainly would have an influence in determining what is a classic, wouldn't you say?

A. Well, I imagine that would be their business. I can't say yes or no. You are getting kind of deep.

Q. "Kind of deep." What do you mean?

A. I am no authority on what is classic or people who write books, what they would consider classics.

Q. Well, would you say that your opinion as to what is a classic or not is important to your job?

A. I try to use good sense; I would try to do my best that this is and this is not; as far as I know, I could.

Q. If somebody told you that it was a classic and you did not agree, what would you do?

A. Well, I would read it, and I would use my own judgment, and I would learn about it; I would go into detail, before I would say yes or no.

346 Q. Now, did you ever read any of Colette's books?

A. No.

Q. Had you ever been informed and has anyone ever told you that it was a classic?

A. No.
Q. Do you think she is a classical writer?
A. I knew nothing about that.
Q. Assume a movie accurately follows one of her books, would you say that that was a classic?
A. To my judgment as censor, no.
Q. Well, does that mean, would you say, that a censor's judgment as to what is a classic or not is different from what is the normal standard of classic?
A. I said, to my knowledge—I am leaving the word "censor" out—from all I saw of her two pictures, I would not judge her as a classic wri.. with those two pictures. That is all I know about that.
Q. What is the other picture?
A. Gigi.
Q. You passed Gigi?
A. Right offhand I can't say I did. That is quite
347 sometime ago. It is on record what I did.
Q. Do you have that record here?
A. No. That is sometime ago. That was a year ago or more. I am not sure.
Q. Well, perhaps to refresh your recollection, Gigi, I recall, is t.. story of a girl who is being raised to be a prostitute, and she decides at some point that she doesn't want to be a prostitute, which, I recall, is the central plot of the story.
Would you say that that is an acceptable theme?
A. Well, I would have to know a little more about it right now. I would have to have notes. I don't like to say yes or no unless I am sure.
Q. Would you say that that sounds like a classical theme?
A. If you had told me to look up my notes, I think I would be able to answer you.
Q. Did I ask you whether you had ever read any of Guy de Maupasant?
A. Yes, you did.
Q. And did you answer that you had or that you
348 had not?
A. No, I had not. But I think we saw the picture.
Q. Would you say he is a classicist?
A. I only know one of his pictures. I don't know anything about the man.
Q. And from that picture would you say that he was a classicist?

A. (There was no response.)

Mr. Hartigan: What is the answer to the question?

If the Master please, she said that she doesn't know anything about the man.

Mr. Mikva: I asked her about that picture.

The Master: Let her answer in terms of that picture.

By Mr. Mikva:

A. In terms of that picture—

Mr. Hartigan: What picture?

By Mr. Mikva:

Q. The picture that you saw, which was taken from some of his stories that he wrote; I believe it was called Le Plaisir. Would you say that he was a classicist?

349 A. I would say no.

Q. You would say no.

Now, isn't it a fact, Mrs. O'Hallaran, that Gigi did play in the theatres here?

Mr. Hartigan: My objection. Well, my objection still stands.

The Master: It is a standing objection.

Mr. Hartigan: Standing objection.

By the Witness:

A. I can't say if it did or did not.

By Mr. Mikva:

Q. And you cannot recall whether you passed it or not?

A. No.

Q. Isn't it a fact that the picture La Ronde played here? Perhaps I can refresh your recollection about La Ronde. La Ronde is a picture, a French picture, with English subtitles, in which—it is a story of a series of love affairs between various people.

Does that help you at all in remembering the picture?

A. No, it does not.

350 I see thirty thousand feet of movies every day, and when I hear the name, especially of a picture that you don't—well, you don't see advertised on your local streets or in your local shows, you just kind of forget that. But just as soon as I will get out the notebook and read it over and I can click on the plot of the picture.

Q. If I told you that La Ronde was the subject of a Supreme Court case in the United States Supreme Court.

A. Yes, I know that.
Q. You know that.
Now do you remember the picture at all?
A. No.
Q. Do you remember that it was passed by you?
A. I can't say.
Q. You don't remember that it was passed?
A. No.
Q. Do you remember the movie I Am A Camera?
A. Yes.
Q. Has that been passed by you?
351 A. Yes.
Q. Just recently?
A. Adult.
Q. Adult?
A. Permit.
Q. Just recently, you understand?
A. Not too long.
Q. Do you remember anything about the plot of I Am A Camera?
A. Not offhand.
Q. Do you remember the picture Magdalena?
A. Yes.
Q. Has that been passed by you?
A. Adult.
Q. It has been passed adult?
A. Yes.
Q. Do you remember the plot of Magdalena?
A. Yes.
Q. What is the plot of Magdalena?
A. Now here I go again. You ask me to go into these things without notes. If I say the wrong thing, that is something. Again I will try to give it just short be-
352 cause we have (indicating)—that is just writing on these other pictures. We have seen it some time back, if you will look into the records.
The Master: Would you feel better if you had your notes with you?
The Witness: Well, I have about five or six books that they are in.
The Master: That this picture may be in?
The Witness: Yes. It just goes on, and when the book runs out, it goes into another book.
The Master: Would it be possible or practicable, Mr. Hartigan, to have those books over here?

The Witness: I don't know even if we save them.

The Master: Just a minute.

Mr. Hartigan: I don't know anything about the books, Master.

The Witness: These are just personal notes.

Mr. Mikva: This is off the record, Mr. Reporter.

(There occurred at this point an informal discussion, outside the record, which, at the direction of Counsel, was not taken down by the reporter.)

* * * * *

353 By Mr. Mikva:

Q. I understood you to say, Mrs. O'Hallaren, that you do remember something about Magdalena because it is some recent picture that you have seen?

A. That is right.

Q. But the other pictures are contained in other notebooks, which you may or may not have, is that correct?

A. That is right.

Q. Now, will you please tell us about Magdalena as briefly and as best you can?

A. Well, the opening scene shows in the house of prostitution there is an older man who has a request for a girl to relieve in the church, to carry, I believe, a statue from one street to another, and he comes to this house of prostitution, and he is on more or less friendly terms with this one girl, who is beautiful, and he tells her that—I can't recall that he comes directly to tell her that the position is open, or that he is telling it to someone else.

354 Anyway, this young prostitute hears about it, and she gets the position, and he takes her with him to the minister or to the priest, whoever the gentleman is that is in charge of this church, and she is given the position to carry the statue through the streets.

And while she is there she has a little change of ways of living. She sees there are better things in life, and she more or less repents in her own way for the wrongdoing—which is very good.

And when it comes time—I think, if I am not mistaken, she becomes very fond of a small child there, and that plays a great part in the change of her life.

The child is ill, if I am not mistaken, and she does something to help to bring this child to good health.

And it goes on. She is just on the verge of carrying this statue through the streets, when it dawns on her that per-

haps due to her past life, she should not represent herself to be something better than she is.

355 And that really is the picture.

Q. Don't the people stone her to death?

A. Yes, that is right. That is the way the picture ends.

Q. They found out that she was a prostitute?

A. Yes.

Q. Was it also the fact that she was also supposed to portray the Virgin Mary?

A. Yes.

Q. And be the Virgin Mary in this religious spectacle?

A. That is right.

Q. And the people found out that she was a prostitute, and they stoned her to death?

A. Yes.

Q. Do you think that that is an acceptable theme?

A. What made it excellent, it shows repentance which was the great thing. She was very sick of her past life; she realized the mistakes that she has made.

It shows that you can make a mistake and wrong-do-
356 ing and try to come back and be a better person.

Q. Does it show that the wages of repentance are death?

A. Well, that is a comparison that sometimes you can make. We take into consideration, if you will allow me to state it of record here, that was my objection to this picture. That there is no repentance for The Game of Love. This woman had all the fun that she possibly could have. She pays nothing.

The little boy and girl did everything that they wanted to do. They just took life and did just what they wanted to do, and nothing else.

If they wanted to get something, if they desired something, they did it. There was no repentance. There was the theme of wrong-doing.

Whereas she in this other picture is stoned and really crucified, if I may use the word, it shows that it does not pay to do wrong, and she did pay.

Q. Would you say that killing somebody by
357 stoning is a crime?

A. That is not the way we as Americans would define justice.

Q. Would you say that if I killed somebody with a stone that I was guilty of a crime?

A. If you have this picture, you would have to consider

the times, just like in the other picture you would have to consider the place and the time of the year and the century, and when you do that today, you find that it is a picture—is not a picture of today.

Q. Does it ever show the people repenting for stoning her to death? Do any of them go to jail?

A. If I am not mistaken—I could make a mistake without notes—doesn't the pastor or minister, or whatever he is supposed to represent, he tells them to go and repent and try to make up for their wrong-doing. I think that is in it.

Q. But it does not show any of them going to jail for having stoned her to death?

A. No.

358 The picture—the theme of the picture is not the people. They took the law into their own hands. It is not in our modern times.

Q. So, in other words, it is not really important, at least as far as that picture is concerned, that the people did not pay for the crime they perpetrated?

A. The girl did.

Q. She did?

A. She did pay. That is the plot of the picture.

Q. But as far as the people paying for their crime, that is not important in that particular picture?

A. I don't know how to answer it. I would like to say that they were not right in doing what they did. I do feel that they must have repented in some way.

The head man told them to repent.

Q. Do you remember the last scene of The Game of Love in which Vinca is standing on the beach and she says to Phil:

"I feel very sad,"

359 or words to that effect, and as small as it is, would you say that that is any sort of repentance?

A. If it is, that is not the way that I— that the ending of the picture felt with me.

Q. It did not strike you that way?

A. The ending of the picture is where the young girl says:

"I will never be first at anything."

Q. That is the ending of the picture?

A. Well, you know, after all, I can't say.

Q. You saw that about six months ago?

A. I have it, the last line, in my notes, so I am taking

from that that it must have been near the end of the picture.

Q. Do you remember the scene, after they boarded up the house, and Phil and Vinca are standing on the beach?

A. The elderly woman gets in the car and pulls away?

Q. No. The very last scene of the picture, showing Phil and Vinca's parents closing up the house, and Phil
360 and Vinca are standing on the beach together.

A. Yes.

Q. Do you remember that scene?

A. Yes.

Q. Do you remember anything that she said there to the effect of what I just told you?

A. No, I don't have a note on that; no, I can't say.

Q. Let me ask you this, Mrs. O'Hallaren: If something is true to life—

Mr. Mikva: Strike that.

By Mr. Mikva:

Q. If something is true and is a faithful portrayal of something that is an historical event, would you say that that makes a difference as to whether or not a picture is obscene or not?

A. Well, there are a lot of things true to life that we can't put on the screen.

Q. Can it be printed in the newspapers?

A. Well, the newspapers are free, free press.

Q. Oh, I see.

You would say that movies stand on a different footing from a free press?

361 A. I don't want to misconstrue. I don't mean that the newspapers should put all the filth because they have a free press. I have respect for our newsmen. I don't think that they would do that.

Q. Do you have respect for our movie makers?

A. Yes.

Q. How about the French movie maker?

A. Yes.

Q. And French movies, too?

A. Yes.

Q. Do you think that they ought to be given the same freedom that the newspapers have, and be given—and they will use their own self-restraint in seeing that pure filth does not appear on the screen?

A. I can't answer that.

Q. Well now, suppose a rape occurs. Is it all right for a newspaper to publish the details of that rape?

A. If I am not mistaken, they do.

Q. All right.

362 Would it be all right for a movie to detail a rape?

A. Well, you see, here is the way I look at a movie, and I may be using repetition now:

The plot and the theme of a picture is what governs the picture.

One rape, explained in this picture, may be entirely wrong, and you take another picture, and it might be something other, and that would make it acceptable. You can't say it is wrong here, and is right there; you can't.

Q. Suppose it was a news reel rather than a picture, and it just showed a rape or described a rape?

A. If I am censoring, and it just showed a rape, I wouldn't allow it.

Q. You would not allow it?

A. No.

Q. Even though you say it was permissible for it to appear in a newspaper?

A. I don't know if it is permissible or not, but I have read it in the newspaper, so I know that—I can't say that I even read it because it has been in a newspaper.

363 Q. Now, suppose that there were a scene—

Mr. Mikva: Strike it.

By Mr. Mikva:

A. Suppose that some very violent events take place; take, for example, the Green Castle, Indiana, raid. Have you read about it?

A. Yes, I have.

Q. It is all right for the newspaper to publish that, isn't it, and even to publish the pictures?

A. Yes.

Q. Would it be all right for a news reel to show that?

A. A raid?

Q. A raid.

A. I have seen many raids in the news reels.

Q. Would it be all right, would you say, for a news reel to depict the Republic Steel raid that occurred here in Chicago in 1937, I mean having motion pictures of what had actually occurred?

A. I don't know what the laws are, if that would be allowed today.

Q. Excuse me.

364 Assume that they depicted a raid, and then that news reel appeared before you for censoring. Would you censor news reels?

A. Yes, we do. But we do news reel. Do we censor news reels? Wait a minute. No, we don't.

Q. You don't?

A. No.

Q. You only censor motion pictures?

A. We have everything else with the exception—

Q. Of news reels?

A. Yes, I am not right; I wish someone would correct me. I think I am right. In fact, I know it is.

Q. Now, if a movie took some part of life, whether it really occurred in a particular instance or not, say it just showed a child, the physical development of the child from five to ten, from years five to ten years of age, showing it as it really occurred.

Would that be all right?

Mr. Hartigan: Now, if the Court please, I think the witness is in kind of a bad position here. She does

365 not get the detail of what counsel is driving at. He is asking her too much.

The Master: I agree as to that last question. I just think that you ought to try to make that very specific, because even I am not really sure what you mean.

Mr. Mikva: I will withdraw that question and ask you another one, Mrs. O'Hallaren.

By Mr. Mikva:

Q. Mrs. O'Hallaren, suppose that a movie with the theme, or the plot of a movie is one depicting the manner in which a child grows up physically; in other words, there are just a series of stages which show the child at five years of age, at eight years of age, and at ten years of age, and when she has developed physically at five, eight and ten years of age, and so on, from age to age.

You would not see anything wrong with such a picture, would you?

Mr. Hartigan: Now, what does counsel mean by developing physically?

By Mr. Mikva:

Q. You understand what I mean?

366 A. Do you mean showing the whole form?

Q. No, no.

A. What do you mean?

Q. I am just talking about a difference in height, a difference in weight, just showing pictures of the way a person develops between the ages of five and ten, without regard to nudity or anything else.

A. Well, I have had five children. I have seen five of them develop. So I just don't know what you mean.

Q. What I am referring to is purely—let me say this: I am sure you have pictures, still pictures, anyway, of your children as—

A. Yes.

Q. (Continuing.) —as they were at five, six, seven, eight, nine and ten years of age?

A. Yes.

Q. Suppose instead of showing motion pictures of your own children between those ages, you just showed motion pictures of some other children. Suppose somebody
367 just made a movie showing motion pictures of that. You would not see anything wrong with that, would you?

A. No, if it is acceptable for everyone to look at the picture.

Q. Now, what do you mean by "acceptable"? Do you mean fully clothed?

A. Yes. You said he was not in the nude?

Q. He was not in the nude.

A. Nothing wrong in that.

Q. Now suppose someone showed a movie showing the mental development of a child between the ages of eight and ten, showing the different things that he said and did, would that be all right?

A. Maybe, yes. It would be very beautiful.

Q. Then, let us say between ten and fifteen, or between fifteen and twenty.

A. I just really don't know what you are getting at, but I see no harm in that.

The Master: You would have to answer the question whether you see what he was getting at or not.

368 But you would not have to answer the question if you did not understand it. You understand, if your counsel does not object to a question, you answer it. Then answer it even though you don't know what he is driving at. Is that agreeable?

Mr. Hartigan: No, it is not agreeable, if the Master please, because I have a standing objection.

The Master: Subject of course to your standing objection.

Mr. Hartigan: Must I object then to every question that he has asked her?

Mr. Mikva: No. I am sure that the Master has meant, subject to your standing objection.

Mr. Hartigan: That is all right. We don't have to interrupt this examination except to ask the witness if she understands the question.

By Mr. Mikva:

Q. Let me say this, Mrs. O'Hallaren: At any time that you don't understand the question, that is my question, please stop me.

A. Well, I don't know how I could not understand
369 unless you are saying something that is over my head.

You are talking about the development of a child from five to ten; when he is in the fifth grade, and then he goes a little higher, and he is in the eighth grade?

Q. And similarly his development between fifteen and twenty, would you see anything wrong in that?

A. See anything?

Q. A movie showing a child age fifteen, and then the things that he does at age twenty.

A. I am not answering that yes or no. I don't know what you are getting at.

Q. Mrs. O'Hallaren, don't worry what I am getting at. I promise to make the question as clear as I can.

If you understand the question, answer it. Now I understand that you don't understand my last question.

A. The development of a child from ten to fifteen to twenty?

Q. Yes.

A. His brain?

370 Q. That is right.

A. And things like that?

Q. Yes, at different ages, the things that he says and does, say, at age twenty.

A. If that were on the screen would I pass that?

Q. Yes.

A. Well, from my experience, yes.

Q. Well now if I suggest to you that Colette, the author of the book which was made into the movie The

Game Of Love was taking two children, one age fifteen and one age seventeen, and showing the development that does in fact occur, the arousing or the awakening—not the arousing—the awakening of the sexual instincts and sexual desires, would you say that that is a fair depiction of what the picture is about?

A. No I would not say that that is what the picture is about. Because, if that is what you are probably trying to show, that every boy or every girl from fifteen to twenty years of age has the same instinct, is that what you are trying to get at, and show it on the screen?

371 Q. Would you say that that development in the boy and girl, having those same instincts, should be shown on the screen?

A. A boy at fifteen knows that this is a gradual development. They don't come from eternity. It is education. It is our position to present that to the child in such a nice way; present it so that the child does not dwell on sex.

Q. What do you mean by "nice way"?

A. Well, present it the way we see it—presenting it the way we saw it on the screen, it was simple, the association being so close together, the young boy and the girl going around in pajamas, and him having a key. He went right into the home, right where she was, right in bed.

Do you want them to accept any other means? Is that what you call "progress," sir?

Q. Would you say that some children develop that way?

A. I say that it is there in every one of us. We all—we are human, but we have to modify it in the
372 right way and see it in the right way, just the way it was brought out. I am a mother. I am human. We are not angels.

Q. Let me say this:

Would you say that there are some people that have their sexual desires and instincts aroused in the way, the way it was depicted there in the movie—some people?

A. I say that it can be there, but it is up to the parents to try to help their children, and not put them in that situation.

If I took my boy and girl to a summer resort, and I said, "You are on your own. You do as you please. I am playing cards," just like them in this picture, where they spend their time playing cards, and the parents never

checking to see what the boy and girl are doing, and give him a key, or allowing him to have a key to a girl's bedroom—

Q. Now, Mrs. O'Hallaren, as I understand it, you have just been saying, you don't think—

Mr. Mikva: Strike that.

By Mr. Mikva:

373 Q. Is your objection then to the picture that you don't think children should grow up that way, is that correct?

A. No, it is not. We want them to grow up, this little boy and the girl.

I have had two sons in school; they are fifteen or sixteen years old. I know that there is a difference between boys and girls.

Q. Now, if someone depicts these boys along at the age of fifteen or sixteen, whether they portray it in books or in the movies, would you say that that is objectionable?

A. Well, I would say yes.

Q. Even though—

A. It is objectionable. I am thinking of what I saw in this picture. It is objectionable the way I saw it in this picture.

Q. Is it objectionable for people like you and me to see it, or is it objectionable for children to see it?

A. It is objectionable for children to see that part of the picture. But I am judging this picture as a whole, for adults and everyone.

374 Now, you wanted to say, is that part just for adults, good for adults, say, that part of the picture, but this is not end of the picture.

Q. Let me ask you this: Did your having seen the picture in its entirety affect the way you—

Mr. Mikva: Strike that.

By Mr. Mikva:

Q. Assuming, I think you told me that your children are all grown now, is that correct?

A. My youngest is fifteen.

Q. Your youngest is fifteen?

A. Yes.

Q. Did your having seen the picture affect your bringing up the youngest child?

A. Did it affect the way I am bringing up my youngest child?

Q. Yes.

A. I don't think I understand.

A. All right. Then I will rephrase it.

Did the picture that you saw, The Game Of Love, result in your changing the manner in which you are bringing up your youngest child?

375 A. I can't answer yes or no. I will have to say, I never gave such a thing any thought.

Q. You think it made a worse parent out of you for having seen the picture?

A. I never connected this picture with any of my children, and I would have to think about that. I hope that I would not be there.

First of all, supervision they have. I try to do that, and I am on my own. So supervision is the main thing in raising children.

Q. And you did not give them any less supervision as a result of having seen this picture?

A. My goodness. I saw this picture in July, and I can't say yes or no. I can't answer that because that never entered—I can't answer honestly.

Q. Do you think that other parents might have seen or do see this picture might, as a result of seeing this picture, give their children less supervision?

A. Less supervision?

Q. Yes, or more supervision?

A. (There was no response.)

376 Q. Will you answer the question? If I may, I will rephrase it.

Mr. O'Hallaren, do you think that this picture would affect people who see it in such a manner that they would change the way in which they were raising their children, simply by seeing this picture?

A. Just a little part of the picture might help that, but seeing the whole picture would not help them.

Q. Would it hurt them?

A. Yes.

Q. They would raise their children in a worse way?

A. I won't say that they would raise them in a worse way. You see, some of it may be— it is just the end. This little conversation in the picture.

What I am trying to say is that I resent the whole picture as a whole.

Q. I am talking about the picture as a whole.

A. The children are not the whole picture, they are
377 not the whole thing in the picture; I mean two young children.

Q. Perhaps we misunderstand each other, Mrs. O'Hallaren.

Do you think that some one child seeing the picture would be affected by seeing the picture so that they would be a worse parent?

A. I can't see that the picture would help them either way.

Q. In other words, it would not have any affect as far as you can see?

A. Either way.

Q. As far as you can see it would neither help the boy nor hurt the boy—it would neither help them or hurt them?

A. Well, seeing the whole picture, it would hurt. That is why I am rejecting it.

I feel as though it would hurt them.

Q. How would it hurt them, Mrs. O'Hallaren?

A. It is just against our moral standards of living. We just don't live this way. This is not for society. You would not have this presented to society.

This is not done in society, and we are society as a whole.

378 Q. You think that people, as a result of seeing this, would change their way of raising their children?

A. No.

If you will excuse the word, there is so much degrading—I can't use the word that I am thinking of, because it is very unladylike; it is way below the belt.

Q. I want to assure you I don't want to press you. You may use any word you want.

A. Do you want me to? Do you want me to say it? This picture is filth. I hope I am not hurting you as a parent.

Q. Not at all.

A. This picture, that is the way it affects me. As a result of seeing this picture, I wouldn't want anyone in this room to say that I would take them and show them that movie and sit two hours to look at this picture, because I don't think it is for a child or an adult.

Q. You think that an adult seeing this picture would change his way of living as a result of having seen this picture?

379 A. Well, I am sure that a woman forty years old would not feel as though she could go out and entice a young man or a young boy.

Q. Do you think that a woman forty years old, after having seen this picture, would immediately go out and entice a young boy?

A. She is not going to be any better.

Q. She is not going to be any worse for it?

A. She is certainly not going to be any better.

Q. Would this picture improve them as far as you know?

A. This picture will not improve anyone. I am thinking the way I saw it.

Q. Would you say that is one of the standards that you are applying as a censor?

A. As a censor, I think we look at a picture to protect the people, or, first of all, the people of normal minds, the people who are less—who can't express themselves, or who may not have the wherewithall like we do as normal beings.

You have to protect the weaker people in our society, the ones of the weaker minds and ones with less sexual
380 habits, so—I don't know if I am expressing myself all right.

As a whole, you have to protect society.

Q. You have to protect society?

A. Yes, sir.

Q. So that any picture which may affect someone who is very weak, someone who does not have a great deal of resistance to sexual impulses, then you think that that should be cut out?

A. Yes, if it is going to affect, it should be cut out.

Q. Let me ask you—

A. It should be taken out.

Q. Let me ask you this question, Mrs. O'Hallaren: Supposing you see something in a picture that you know is going to affect the sex degenerate—do you understand what I mean by that?

A. Yes, I do.

Q. Would you say that that part would be cut out?

A. Yes, I do.

Q. Now, Mrs.—

A. Remember again, you always have the plot
381 of the picture there. You know, sometimes there is good in everything, you know.

Q. Surely.

But having, at any rate, a sex degenerate—

A. I think it would affect him.
Q. You think it would affect him?
A. I would try to help him.
Q. You would try to help him by cutting out that part?
A. Yes.
Q. Now, Mrs. O'Hallaren, psychological studies have been made of sexual deviates and sexual degenerates, and if I were to suggest to you that it has been found in some people, some sexual degenerates' desires are aroused by seeing a street car, if I could prove that to you, do you mean that you would cut out every scene containing a street car?
A. Well, that is a very queer way of getting excited. (Laughter.)
I can't really believe such a thing.
382 Q. How about a flagpole?
A. Did I talk out of turn?
Q. No.
A. A flagpole? Was that your question? What was your question?
Q. Well, suppose I were to tell you about a number of people, or prove to you that the sight of a flagpole arouses some people's sexual impulses?
A. Well, it could be.
Q. Would you then cut out all scenes containing flagpoles?
A. No; that is a little far fetched. That is a little too far. I don't think we could cut—
Q. Well, what line would you draw, Mrs. O'Hallaren? Is it the weakest member of society that you want to protect?
A. No. We protect all as a whole.
Q. All as a whole?
A. That is right.
Q. So that even though some people might be affected by a picture like this or by a flagpole or a picture of a street car—
383 A. It could. What we are talking about, to my way of thinking, it would affect everyone.
Q. It would affect everyone?
A. Yes.
Q. It did not affect you?
A. It did not affect me in the way that you asked me, but I didn't feel any better.
Q. But you didn't feel any better?

A. Nor would I say that I had two hours of entertainment or that I learned anything educational; that I was really stunned, and I was embarrassed, because we had two gentlemen in the room watching and, as I say, I am a woman.

Well, I am a mother. I have been around. I don't—I am not shocked if someone says something that—I am not easily embarrassed, although I try to be a lady. I can hear a joke, and I can tell a joke.

But I really was embarrassed at this picture. Now, that is my sentiments on it.

Q. Now, if I were to suggest to you that other women might not be embarrassed by this picture would that make any difference to you?

384 A. I would not agree with you. I would say that they would be embarrassed, to my way of thinking.

Q. Suppose I were to tell you that women have seen this picture all over the country—Boston, New York, Los Angeles—and that there has been no indication on their part that they were embarrassed by seeing it, would that make any difference?

A. No. I still say that inwardly I can say they were embarrassed.

Q. Mrs. O'[illegible]llaren, you look for a picture to make people better, is that correct?

A. (There was no response.)

Q. In other words, you think that is one of the vehicles to make people better, is that right?

A. No. I say I looked at a picture in many ways. First of all, entertainment, because you pay to get in. You go for relaxation. After you put your children to bed you go to them to be entertained.

Q. So a picture ought to be entertaining?

A. Well, that is number one.

385 Now, if you are going to see a picture for educational purposes, not really looking for love, you want that alone.

You want to come away with some feeling that you have had a nice evening, something that you have gained by sitting there.

I don't say that you have to get good in every sense of the word every time you see a picture.

But I do say this, that you are not coming away with something bad from any movie; you should never leave a movie with something bad.

Q. And if you do, then it is a bad picture and ought not to be shown?

A. If it is bad, it is bad.

Q. What do you mean by bad?

A. Oh, dear. Three little letters. What do I mean by bad?

(The witness pauses.)

Now, you know I am—in what way do I mean that word?

Q. In what way are you using it here? I don't mean a dictionary meaning. I am merely asking you in
386 the sense that you are using it here.

A. Well, I have not left the theater with any improvement; in fact, I would have been better off if I had stayed home because my time was wasted.

It is like reading a book that has the same contents. Wasted time.

Q. Well, would this be accurate, Mrs. O'Hallaren, if you believe that it is a part of your job to insure people of Chicago that they get good entertainment when they go to a movie?

A. Good entertainment, educational entertainment.

Q. So that if it is not good, if it is not good entertainment, and if it has no educational value, you don't think they should be subjected to that kind of movies, is that correct?

A. Well, there are a lot of other things, I guess, that you could offer to them in a movie, as long as it is not obscene as in this movie.

Q. But those are two of the standards that you use?

A. Two of the requirements, and there are others.

387 Q. That they at least be entertaining and educational?

A. Yes.

Q. Now, if I told you that I saw the movie and that I found it very entertaining, would that make any difference to you?

Mr. Hartigan: In what way?

Mr. Mikva: That I found it had a great deal of entertainment value; that I enjoyed myself immensely when I saw the movie.

By the Witness:

A. It would surprise me, although I don't know, to think that you could find entertainment out of what I saw, if you saw the same thing.

By Mr. Mikva:

Q. I saw the movie.

A. And if it entertained you for—you are a family man?

Q. Yes, two children, Mrs. O'Hallaren.

A. It would surprise me.

Q. Would it make any difference in whether you were censoring the film—

A. Pardon?

388 Q. Suppose before you censored the film, I had met you on the street, and I said, "Mrs. O'Hallaren, I saw the movie The Game of Love in New York, and I found it very entertaining," would that have made any difference to you?

A. And then I looked at it?

Q. And then you looked at it.

A. Yes.

Q. Would you still have censored the movie?

A. Yes. It would be a surprise.

Q. Would it make any difference to you? Would it have made any difference to you?

A. Oh, no, no, no. I misunderstood.

I hope that he has that correctly.

Q. He takes down correctly everything.

Suppose we take a set of people of the City of Chicago and all of them find that it was entertaining?

A. After they saw it, or a majority of them?

Q. A majority of the people, after they saw the picture, would that make any difference?

A. No.

Q. You would still censor it?

389 A. Yes.

Q. In other words, if it does not have entertainment value, as far as you are concerned, that is the standard?

A. No.

Q. That is one of the standards, even though it may not be the only standard?

A. I would censor if as a whole picture, not just because it lacked the entertainment as a whole, but because it did not do a lot of other things.

Q. Now let me ask you this:

Suppose you had found the picture very entertaining—I understand from what you say that you did not—but suppose you had, would that have made any difference to you?

A. Well, you are so far fetched because something like this could not be entertaining to my way of thinking.

Q. If I were to suggest to you that the movie has been played to full houses for ten weeks in the City of Boston—

A. Yes.

390 Q. Would that surprise you?

A. Yes. I know it is, but it would still surprise me. It would still surprise me that it is.

Q. If I were to tell you that all the critics in Boston have said that it is very entertaining a picture and a very good picture, and that they urged every reader to go and see it, would that surprise you?

A. Yes.

Q. Would it make any difference?

A. No, if I saw it again in the same form.

Q. You would still say that it was not entertaining?

A. Yes.

You are stressing so much that I say it is not entertaining. I hope you don't think that that is the only thing that I am interested in or look for in a movie is entertainment.

Q. I guess you mentioned that there are three things.

A. Yes.

Q. Just a few more questions, Mrs. O'Hallaren.

A. So nice.

391 (Laughter.)

You and I will be going together, and our first date will not be to The Game of Love.

Q. Not to see a movie. I would be delighted myself, except that I don't think that we could ever agree on a movie.

Mrs. O'Hallaren, I am going to read for some other purposes that I have not yet mentioned, I will just mention certain scenes in them. Maybe you will remember them, and maybe you don't. If you remember them I wish you would answer the question as far as you can; even if you don't, if you will just take my description of the picture as true, whether or not it is.

Would you tell me how you reacted to such a movie as the picture entitled Sadie Thompson? Did you see that picture?

A. Yes, surely.

Q. Do you remember the scene in Sadie Thompson where she does what, to my way of thinking, was a very suggestive dance in a bar room with all the soldiers and sailors around? Do you remember that scene?

392 A. I see so many dances. I am going to say no because I saw the picture, and I—if I remember, she has a skirt, a short skirt, wrapped around, in the dance. But just to remember the dance, I don't know if I do or not.

Q. Well, that picture passed, as I recall it?

A. Yes.

Q. So I would assume that you did not find the dance suggestive in such a manner that it would be obscene, otherwise you would have eliminated it, is that right?

A. Yes, yes. If it was obscene, it would not have been passed.

Q. If I told you I found it very suggestive, would that make any difference?

A. Well, we just don't see things the same way. (Laughter.)

Q. Now, Place in the Sun, do you remember seeing that picture?

A. No, I don't.

Q. That was a picture abount a young boy who was working in a plant, and he is going with a boy—that Shelley Winters in the boat?

393 Do you remember that picture?

A. That is a way back.

Q. Do you remember the theme of that movie?

A. (There was no response.)

Q. If I may refresh your recollection, the hero has intercourse with her, or so it is suggested anyway, and he wants to break off with her to go with this other girl, who is the owner's daughter, as I recall.

A. Yes. It is a suicide in the boat, or something.

Q. That is right.

Do you think that that is an acceptable theme?

A. Well, there I go back again. You know, if you look at the picture from beginning to the end, there may have been something which is not—I can't—I don't want to answer because, as I say, I have to know what I saw.

Q. Captain's Paradise?

A. I didn't see it.

We have days of; we have a vacation. I didn't see it.

394 Q. You don't know anything about it?

A. No, I don't.

I am like a mailman on a holiday: I don't go for a hike on my day off.

Q. Jane Russell in The Outlaw, do you remember that movie?

A. No, I did not see that at that time.

Q. Oh, you did not see it.

East of Eden, do you remember anything about that picture?

A. That was before my time. That is a very old picture.

Q. That is a very recent picture.

A. East of Eden?

Q. Yes.

A. I did not see it then.

Q. The Miracle?

A. Yes.

Q. Did you find that picture obscene?

A. Yes.

Q. What did you find obscene about that picture?

A. Well, the main girl in the picture, she has an idea that when she is up in the hills, that she has a visit
395 from someone from the heavens, and she becomes pregnant, and she really becomes pregnant from a shepherd man there or a helper or someone.

She has great ideas that she has had a little affair with a saint, and she goes through streets carrying out the theme, with a crucifix.

I believe the whole picture is—I rejected that twice.

Q. Now, she was demented? Don't you say that she was mad or insane?

A. Yes, in a way.

Q. Is there any nudity in the picture?

A. Offhand, I would say no, but I could be wrong, but I don't think that there was. If I remember, she had long skirts. I just—

Q. Was she attractive?

A. No, no. Not—I don't think there would be or she would be attractive to me nowadays.

Q. Would you say that that picture tended to arouse sexual passions?

A. Well, this picture is more or less the theme—
396 it was a very vulgar picture, to a degree.

Q. Sexually?

A. No.

Q. In what way?

A. Well, it was when she really did have—she was

vulgar. She did—to a degree, sexually—she did have intercourse with the shepherd.

Q. But there are a lot of pictures that you have that suggest that they had intercourse?

A. Going back again, it depends on the picture.

We are talking about The Miracle?

Q. We are talking about The Miracle.

A. Yes.

Q. It was a fact that she had intercourse?

A. Yes, that was immoral.

Q. That was immoral?

A. That was one of the reasons.

Q. Now getting back to Sadie Thompson. In Sadie Thompson it was very clear that she had had intercourse? Isn't it true, or don't you remember?

A. I would rather not in—

Q. Place In The Sun, we are talking about.

Mr. Hartigan: Master, would you mind recessing
397 for a while?

The Master: I wanted to suggest it. We have been here since 9:30.

Mr. Mikva: May I just have about two questions, please?

The Master: This is off the record, Mr. Reporter, please.

(There occurred at this point an informal discussion, outside the record, which, at the direction of the Master, was not taken down by the reporter.)

By Mr. Mikva:

Q. Place In The Sun had intercourse in it, isn't that correct?

A. Yes.

Q. And The Miracle had intercourse in it, isn't that correct?

A. Yes.

398 Q. Now, Place In The Sun was passed, and The Miracle was not passed.

What else is there in The Miracle that made it obscene as far as you were concerned?

Mr. Hartigan: If you will remember, Mrs. O'Hallaren, you are without your notes.

By the Witness:

A. No, I will say I don't remember.

The Master: Would you want to look at your notes?

The Witness: The Miracle, we saw that two years ago, and another thing, it was against the code.

By Mr. Mikva:

Q. Against the code?

A. Yes.

Q. In what respect?

A. Well, I would have to have the code for the City of Chicago. It was immoral and obscene, was The Miracle.

Mr. Mikva: I see.

I have no further questions.

The Master: Now, folks, before you leave, and
399 this is off the record, Mr. Reporter.

(There occurred at this point an informal discussion, outside the record, which, at the direction of the Master, was not taken down by the reporter.)

The Master: You want about a ten minute recess, is that right, Mr. Hartigan?

Mr. Hartigan: Yes.

(A short recess was taken.)

By Mr. Mikva:

Q. Mrs. O'Hallaren, it appears that we are not through with you yet.

Would you tell me the definition of—you used the word "obscenity"?

A. It is anything offensive to chastity or decency, or, in other words, it is vulgar.

400 Q. Would you define the word obscenity? Give your definition of the word obscenity, such as you use in the censoring of motion pictures?

A. Obscenity is an offense to decency, and is vulgar.

Q. Will you give the definition of the word immorality?

A. That is vice, or wicked, or lewd.

Q. Is that different than your definition of obscenity?

A. They are different, but they are hand in hand.

Q. Are the synonyms, do they mean the same thing?

A. No, I don't think so.

Q. You think there is a definite shading in there?

A. Yes.

Q. What about fornography?

A. I am going to be honest on that, you asked that the other day, and I did not know it, so I looked it up. For my own satisfaction, isn't it a dirty picture? Is that the definition of the word?

Mr. Mikva: Perhaps I had better ask the question differently.

Q. Do you use the word fornography in censoring
401 motion pictures?

A. No, I have never used it.

Q. Do you use any other word that encompass standards, other than obscene and immoral? Do you use words which have another standard?

A. Depravity.

Q. What do you mean by depravity?

A. Wickedness to corrupt.

Q. A wickedness to corrupt?

A. A wickedness that has a tendency to corrupt.

Q. What other words do you use as standards, if any?

A. I don't know, we write them every day.

Mr. Hartigan: Have you your exhibit on the card?

Mr. Mikva: I was going to look for it.

Q. The words you used in here were "Not acceptable, according to standards of decency"?

A. Yes.

Q. Is there any other word you use for "not acceptable to the standard of decency"?

A. They would be, not acceptable, according to our standards of decency within our Code.

Q. Which section of the Code?

402 A. That is what we censor by.

Q. Obscenity is a synonym for immoral?

A. Yes, according to the Code.

Q. Does a movie necessarily have to involve nudeness to be obscene or vulgar?

A. If I may be frank, if a woman's privates were exposed to me, it would be obscene, because it is vulgar. If you take a woman, naked from the waist up, it would depend on what is being led up to. If it is exposed to me the other way, it would be vulgar.

Q. You used the word vulgar?

A. Indecent.

Q. Does she have to be that, and the picture would be obscene? If it was in a picture, it could still be obscene?

A. You are speaking of one thing, the nudeness?

Q. Obscenity includes something besides nudity, is that correct?

A. Yes, absolutely.

Q. Taking the Game of Love, you found that obscene, aside from the nudity?

A. If the nudity was the only thing. I would have classed the boy being in the water, and the girl on
403 shore as something else.

Q. You found other things in the picture offensive to decency?

A. Yes, offensive to decency.

Q. We have talked earlier about the pink slip only type of classification?

A. Yes.

Q. You have three types of finding you can make?

A. Yes.

Q. What are they?

A. General, adults only, or rejection.

Q. What standard do you apply in determining whether a picture should be general, or adults only?

A. A general picture, is if it just goes through with an entertaining picture, with no child born out of wedlock and no illicit affairs. Remember, we take in brutality. That is a cut. We can cut it, and it has nothing to do with adults only. We base it upon a child born out of wedlock or an illicit affair between a man and a girl. He may have his wife and have another girl.

Q. You could classify a picture as obscene even though it contained an illegal affair?

404 A. It depends on the picture. If it is just a scene of an illicit affair, I would give a pink slip.

Q. By pink slip, you mean adults only?

A. Yes, because to me it would not hurt an adult to see about a child born out of wedlock.

Q. In other words, the distinction between the pink slip and outright rejection is whether seeing a picture would hurt an adult. If it would hurt an adult it would be rejected?

A. If it would hurt everyone, as a whole.

Q. You mean, everyone in the City of Chicago?

A. I don't know how to answer that. When I am censoring a picture, I am censoring it for everyone who wants to go.

Q. The difference between a pink slip and a general is as to whether it would not hurt children, then you give a general, and if it would hurt children, you would give it an adult only?

A. If it would hurt the children, then it should be given adult only.

Q. What do you mean by hurt?

A. If you have a child sitting in the movie and
405 have a child born out of wedlock, or see a woman have an affair with a man, and there are romances going on which are illicit, or sometimes, the extreme brutality, if we think it will hurt a child. We do not stay with sex life in censoring pictures. If anyone is abused in a picture to the extent that it would hurt a child, or a scene which would make the child become over-excited—

Q. What do you mean, sexually?

A. No, I am getting away from that. A child born out of wedlock is cut from the pictures for children. We cut them if we think extreme brutality would hurt a child. We cut that. A picture which we adult only, because of brutality is where the family is captured and there is a lot of brutality.

Q. Do you think this picture, the Game of Love, would hurt a six month old child?

A. A six month old child?

Q. Would a six month old child be hurt by the picture?

A. I don't think a six month old child would know he is looking at a picture.

Mr. Hartigan: Isn't that unfair, to make it so
406 obvious?

The Master: Off the record.

* * * * * *

Mr. Mikva: Q. What about a year old child?

A. It could not hurt a one year old child.

Q. What about a two year old child?

A. No, I don't believe so.

The Master: Off the record.

* * * * * *

Mr. Mikva: Q. At what age do you think it would hurt a child?

A. I think a child seven, when he sees this young couple on the beach, and in a stack of hay, and knowing they are not brother and sister, and he was going in and out of her room with a key. I think a child of seven would think, what goes on.

Q. A child under seven would not be affected?

A. You change every seven years. That is the age of reason. You start to school and learn right from wrong at seven.

Q. What about a child of eighteen, would it harm a

child of eighteen, the same thing that would harm a child of seven or eight?

407 A. This would have a great effect on a child of eighteen, greater than on a child of seven or eight.

Q. When you make a pink slip classification do you take into account the different ages at which the children would be affected?

A. We do not have a rule. When we say adults, we mean children under twenty-one. We cannot say we will show this picture to children up to ten, and this picture to those under eighteen.

Q. Do you know in Illinois the law for emancipation is eighteen for a girl?

A. I know she is of age.

Q. And boys of twenty-one?

A. Yes.

Q. Girls, as you understand it, are not allowed to see adult only pictures?

A. I don't know if it is in the Code, but that is the understanding.

Q. That is your understanding of what?

A. It is not mine.

Q. That is your understanding of what you are supposed to be doing?

A. Yes.

408 Mr. Mikva: I have no further questions. Mrs. O'Hallaren, I appreciate the gruelling nature of the questioning, but I assure you none of it was intended to insult or affront you. I hope you excuse me.

Mrs. O'Hallaren: I am trying to be fair in this. One thing we hate to do is to reject a picture.

Mr. Mikva: I think you have been very candid. Thank you.

(Witness excused.)

409 **EDITH JOYCE**, a witness called by the plaintiff herein, under Rule 43-B, having been heretofore duly sworn, was examined and testified as follows:

Cross-Examination by Mr. Mikva.

Q. Will you state your name?
A. Edith Joyce.
Q. Where do you reside?
A. 1811 West 104th Street.
Mr. Mikva: May the record show this witness is being called, pursuant to Rule 43-B, the same as the other witnesses.
The Master: You have been sworn?
The Witness: Yes.
Mr. Mikva: Q. Mrs. Joyce, how long have you been on the Police Censor Board?
A. Going on nine years.
Q. Going on nine years?
A. Yes.
Q. What is your salary, Mrs. Joyce?
A. Three hundred and six dollars a month, I believe. There are so many things come out of it. My real
410 check is one hundred and two dollars twice a month.
Q. Previous to being on the Police Censor Board, what was your occupation.
A. I was a housewife and a club woman.
Q. A housewife and a club woman?
A. Yes.
Q. What clubs did you belong to, Mrs. Joyce?
A. The Beverly Woman's Club. The Chicago Woman's Civic League. St Barnabas Woman's Club. World War II Mother's Club. The Bridgeport McKinley Park Improvement Club. I was a Cub mother and a Brownie mother. I might say now, I was elected on the Board of the Commissioners of Small Parks. It was an honorary position.
Q. This is in the City of Chicago?
A. Yes, just before the park consolidation.
Q. Previous to that, what was your occupation?
A. When I left school I took a business course. I was secretary to Mrs. Kellogg Fairbanks. She went to Europe. That was the first job. I was then with the Furness Steam-

ship Company at 175 West Jackson Street, and the Board of Trade.

Q. What did you do there?

411 A. I was with the general manager on the steamship cargoes, not on passengers.

Q. What schools did you attend?

A. I attended the Everett Grammar School and the Englewood High School on 62nd Street.

Q. You graduated from the Englewood High School?

A. Yes.

Q. After you graduated from the Englewood High School, you went to business school?

A. Yes.

Q. Did you have any literary courses in high school, or in business college?

A. Literature? It was purely business.

Q. Not the Arts?

A. No, just business.

Q. How many literary courses did you have in high school, the usual number?

A. Let us put it that way.

Q. What magazines do you subscribe to?

A. Time and Readers Digest. I don't subscribe to these books, but I do read them when I get them. McCalls, Woman's Home Companion, the Sunday Visitor, and once in awhile the Christian Science magazine.

412 Q. Did you ever read the Saturday Review of Literature?

A. No, sir.

Q. Did you ever read Harper's Magazine?

A. Infrequently. I cannot say I am a regular reader of Harper's, but if an isue or an article is called to my attention, I read it, but not generally.

Q. Do you read Variety?

A. No, sir.

Q. Do you know what Variety is?

A. I think it is a theatrical book or paper.

Q. Do you read it?

A. No.

Q. Do you read the Motion Picture Daily?

A. No, sir.

Q. Or the Film Daily?

A. No, sir.

Q. Do you read the book review section in the daily papers?

A. I try to, but I don't get time to read as much as I like, although I like to read. I read anything before me, which is all right.

413 Q. Would you say your reading tends to the classical articles, or to the novels?

A. I would say to current events. That is taste. I read the Readers Digest because of the digest, and Time because of the prevailing interest, and I don't get to read the others as a pasttime.

Q. Which of the Chicago papers do you read?

A. I subscribe to the Daily News, but I read all of them.

Q. Every day?

A. I might read one one day, and two the next, throughout the week I read all of them.

Q. Do you read the book reviews in the Sunday papers?

A. No, I don't.

Q. During the last year which books have you read?

A. I read them, and I forget them. I always have a book on my desk. I forget the titles, but I do read, believe me.

Mr. Mikva: I have no reason to question that.

Q. Do you read any of Thomas Hardy's works?

A. No.

Q. Do you read any of Guy de Maupassant's works?

414 A. I read one, many years ago.

Q. Do you remember the name of it?

A. No.

Q. Did you like it?

A. No, I did not like it.

Q. Did you ever read the Scarlet Letter?

A. It seems I have, but I have completely forgotten it. It seems to me it had something to do with misconduct—at the moment I have forgotten.

Q. Have you ever read any of Colette's works?

A. No, sir.

Q. Do you speak French?

A. No, sir.

Q. Would you name what classic writers you read frequently?

A. I have them in my library at home, but I don't read them. I have not read them at all recently.

Q. Can you state what classical writers you have read at any time?

A. I lean toward poetry. As I say, I don't get time to read full books.

Q. What are some of the poems you have read?

A. Eugene Field, Longfellow, J. Whitcomb Riley—
415 I should be able to remember more than that.

Q. Have you ever read any of Carl Sandburg?

A. Yes.

Q. And Walt Whitman's?

A. Yes, but not the complete series.

Q. Could you define a classic for me?

A. A classic—I can define it, but I cannot think right now. Frankly, I looked it up.

Q. O. K.

A. From my dictionary it is a standard, model or guide. I don't agree with it, but that is the way my dictionary reads.

Q. We do not care about the dictionary, what is your definition?

A. From my viewpoint, it is fine literature, handed down from generation to generation as a reference for good literature.

Q. How old do you say it has to be before it becomes a classic?

A. Most of them, as you know, were written in the 18th Century.

Q. You think most of the classics were written in the 18th Century?

416 A. Most of those I have.

Q. Do you think something written last year could be a classic?

A. Yes, if it rates.

Q. How is that rated?

A. I cannot answer that the way I want to. I would say, good reading, good literature, morals—a book well written, and a book which would have substance to enlighten and feed the mind.

Q. Should it have moral factors?

A. Most of the classics I have read have little phases of risque in a paragraph or a sentence, but generally they have literary value.

Q. They do not have to be moral?

A. It would be good if they were.

Q. You think they would be a better classic if they were?

A. I would enjoy them more.

Q. Could it be a classic, according to your definition,

even if it did not have it, and not referring to the dictionary?

A. It would all depend on the depth it would go out of our moral standards.

417 Q. Mrs. Joyce, suppose fifty leading literary figures in the world got together and decided a book was a classic, and wrote reviews of what a wonderful classic it was, and you read it and did not agree, and you though it was immoral, what would you say?

A. Who am I to question fifty people?

Q. You never read Colette's works?

A. That is right.

Q. You have seen two pictures, one is the Game of Love?

A. Yes.

Q. If they portray the book, as written, would you say that was a classical work?

A. No.

Q. If I show you fifty people who said that, would that change your opinion?

A. No, that would not, there were happenings in the picture that regardless of who would say it was all right, from my viewpoint it would not be all right.

Q. Suppose I were to tell you that she was the first woman elected president of the distinguished Gon-
418 court Academy, which is distinguished, would that change your opinion?

A. No.

Q. Suppose I said she was the first woman in history to be made a Grand Officer of the Legion of Honor, would that make any difference?

A. No, sir.

Q. Suppose I told you she had an honorary membership of the American Natural Institute of Arts and Letters, would that make a difference?

A. No.

Q. And this is very rarely given to a foreigner, would that make a difference?

A. No.

Q. Suppose everyone who reviewed her books said she was a marvelous writer, would that make any difference to you?

A. If the picture I have seen was taken from her book was one and the same, I would not agree with that.

Q. Would you say they were wrong?

A. No, sir, I would not say they were wrong.

Q. What would you say about it?

419 A. Can I speak frankly?

Q. Yes.

A. I would be surprised and amazed.

Q. If I told you Colette circulates freely in the Chicago Public Library of Chicago, would that surprise you?

A. Of course, it would not change my opinion at all. What surprises me is, if the book and the picture are the same, it surprises me.

Q. It does surprise you?

A. Yes.

Q. It would surprise you even more, if I told you children can go in the library and get the book and read it?

A. May I answer it?

Q. Surely.

A. That is regrettable.

Q. Does that surprise you?

A. Certainly it surprises me.

Q. Would you think it would be good if we kept children from reading that book?

A. I don't believe that type of book is good for children, or for adults.

420 Q. Do you think it might not be a bad idea to look over the books before they get in the Public Library?

A. If there is any more like this picture I saw, we should.

Q. You think it would be a good idea?

A. If that is what children are getting to read.

Q. Not adults?

A. You said children.

Q. And adults?

A. Yes.

Q. Suppose some newspaper took the book by Madam Colette, which was called Le Ble en Herbe and printed it in serial form in the newspaper, do you think it would be a good idea?

A. I would like to answer you, as to my opinion, as to the question.

Q. All right.

A. I think most of our newspapers would hesitate to send out into general circulation that plot or theme or book.

Q. And if there was some newspaper that did not have that much sense and printed it—

421 The Witness: I did not say that, I said they would not print it.

Q. If some newspaper went ahead and printed it, do you think that ought to be stopped?

A. As far as they ought to be stopped, I think if a newspaper printed a book like that, for general reading, there should be some supervision to prevent an abuse of their freedom.

Q. If a newspaper ever engaged in that type of conduct, there should be some authority to stop them from printing the book, is that right?

A. You are a lawyer. You worded it better than I could.

Q. You believe they should be stopped?

A. I am not for censorship of the press, or anything, but sometimes it is the lesser evil.

Q. Censorship is the lesser evil than being exposed to this type of thing?

A. Yes, as to the picture in this case.

Q. Were you harmed by seeing this movie?

A. I was not harmed, but frankly, I was shocked. I was shocked, because I did not want to accept that a movie producer would put something as corrupt, by power
422 of suggestion, and by influence on the mind of the reader. I was shocked to think that could happen, and it could land in our studio to be reviewed. Sometimes, when we get something that we all feel, as a unit, is really contrary to our Code and is the reverse to everything which is clean and wholesome, and the standard for young people, our American standard, for general reading and general viewing, sometimes we debate it all day, because none of us have a grievance against the Code. Sometimes we call on God to guide us. Sometimes because we feel answerable to a distributor and to the public. We do not like to cut. When you review it every day you get an idea of what the average movie goer likes and does not like. One more thing, it is amazing how many people, just in general conversation, say, "Did you pass such and such a picture." It may be that we did. They say, "How could you have passed such a thing, it was terrible." We debate all day, and there may be different viewpoints—

Mr. Mikva: Just a minute. What do you mean by awful?

423 A. It could be this thing, a bed scene, where you cannot pinpoint it and say it is unclean and unholy—

Q. You said unholy?

A. I don't believe I said unholy. May I hear what I said?

Mr. Mikva: Read the question.

(Whereupon the last portion of the record was read by the reporter.)

Mr. Hartigan: You did not mean to say unholy?

The Witness: I did not mean to say unholy. I meant unwholesome. I don't know where I got the word. It must be in my head.

Mr. Mikva: Q. Are you familiar with the United State Supreme Court decision in the Miracle case? I don't mean that you read it, but you know there is such a decision?

A. Yes.

Q. You know that said that New York could not ban the picture?

A. Yes.

Q. Prior to that, was the standard "unholy" one
424 of your standards?

A. No.

Q. It was not used in Chicago?

A. It was an error of speech on my part. It did not fit in with the particular trend of thought.

Q. I gather from the position you are in, you have been there nine years?

A. Yes.

Q. You have a good idea of what the public likes, and they do not like, is that correct?

A. We try. It is continually changing, each picture has its own theme or plot. It is like three or four different people, each has its personal choosing or recognition. In a motion picture there are certain things in one picture which is not in the other. There are two different themes, and in one picture we could get around it, and we cannot in the other. We do the best we can.

Q. Does it surprise you to learn that the picture, the Game of Love, has been playing to full houses in Boston for ten weeks?

A. Is there censorship there?

Q. Yes, there is.

425 A. I may be old-fashioned, but I still stick to clean wholesomeness and decency.

Q. Do you try to keep the public from being offended in seeing the pictures they see?

A. We try, primarily, to give the public what they expect in a picture. The normal movie goer, that involves the mother, father and children. We do not have too much trouble.

Q. Did you see the movie, "Place in the Sun"?

A. This picture has no seal of approval.

Q. That is right, it does not, it is a foreign picture.

A. Yes, our American pictures, in the most part, have the seal of approval, and have the censorship of the Will Hays Office, and the things which might be considered objectionable, or in bad taste, are taken out by the Will Hays Office. We do not have the difficulties and the troubles, as a rule, with that type of picture, as we do with a picture of this type.

Q. Suppose that the picture, the Game of Love did not have any English subtitles, and was all in French. Most of the people in Chicago do not speak French, is that
426 correct?

A. I understand.

Q. Would you say that picture could not be shown?

A. It could be shown.

Q. Suppose we take a picture which has nothing objectionable in the picture, but it is all in French, but not the subtitles, would you say the picture should be shown in Chicago?

A. I would have to know what the dialog was.

Q. What would you do?

A. We are not confronted with that, they are always there.

Q. Suppose you have an interpreter there and he tells you the substance of the subtitles?

A. The interpreter tells us word for word.

Q. If there is no English subtitles?

A. If it is a good picture, it is a good picture.

Q. Most Chicago people do not speak French?

A. You asked that question.

Q. Would you pass the picture?

A. I would pass an entertaining French picture, yes.

Q. Even if it did not have subtitles?

A. If it did not have subtitles, I would have to
427 know from the portent of the picture to pass upon it, and I would pass it, if it was clean.

Q. Most of the people in Chicago would not enjoy such a picture, is that correct?

A. That is correct, but it would not be the reason for

me to reject the picture, because the majority of the people would not enjoy it. For those who would enjoy it, they should see it, as long as it is an acceptable picture.

Q. Suppose I tell you a good portion of the people in Chicago would enjoy the Game of Love, would that make any difference to you?

A. May I answer off the record?

Mr. Mikva: We wish to keep it on the record.

A. I don't agree with you. This is a family city.

Q. I am a family man, I have two children.

The Witness: How old are they?

Mr. Mikva: Two and a half years old and six months. Suppose I told you I enjoyed the picture, would that surprise you?

A. I cannot answer, we have to judge the pictures, according to our Code. Of course, we see it from a moral viewpoint, which is paramount. If you say you en-
428 joyed it—I cannot answer it.

Q. Be frank, do not hesitate to hurt my feelings.

A. I would not, for the world. I would not understand how you can enjoy a picture which I call unclean, with that plot.

Q. Do you think a person who reviews pictures for newspapers, are they experts in what people enjoy or do not enjoy?

A. I do, but I disagree with them occasionally. That is our feeling, and they are entitled to their feelings. I wish I could put some of mine in print sometimes, but I cannot. That is where they have an advantage over me.

Q. If I told you that a reviewer who wrote the review said it was a wonderful picture, would that surprise you?

A. Yes.

Q. It would surprise you?

A. Yes.

Q. Would it make any difference to you on accepting or rejecting the picture?

A. I would reject the picture.

Q. Suppose we put the picture to the vote of the
429 people of Chicago and they found it not obscene, you would still reject it?

A. From my viewpoint, I could not see that ninety percent of the people in Chicago would accept the picture, or approve it. As I said, it is a film which is objectionable, the plot of the picture is unclean.

Q. Do you think pictures about divorces are good pictures?

A. Divorce is a family headache, in most cases, to our people, generally. At the moment I cannot recall any picture with a divorce as a problem.

Q. Suppose someone made a picture which is a biography of Tommy Manville—you have heard of him?

A. Of course, yes.

Mr. Hartigan: Just take judicial notice of that.

The Witness: Where is he, maybe I can be fifteen or sixteen again.

Q. Suppose someone made a picture which was a biography of his life, and one divorce after another, would it be a good picture?

A. I have read so much in the newspapers about
430 him, I think the man is non compos mentis.

Q. Do you think it would be a good picture?

A. There are limitations.

Mr. Hartigan: A good picture, in what way?

Mr. Mikva: I will get to that.

Q. Do you think it would be an acceptable picture?

A. No.

Q. You would reject that?

A. I would reject that. I would not reject, maybe, a picture where there is a divorce in the plot. The divorce would be one of those things which are accepted, but Tommy Manville, no. I would compare him with animal life.

Q. Why did you reject the Game of Love?

A. Why?

Q. Yes.

A. There were many reasons. I rejected it because of—my paramount reason for rejecting it was, it was not a picture, it was a sort of a story. It did not have a plot. It was a story which began with a sex leaning by adolescents, and carried on to an elderly woman, who plied the boy, first with wine, then remarks, and talked to him
431 when he brought the letter that it was from her husband, who could only write. As it came out in the picture, the implication was that he was terribly old or ill, in other words, as a husband he was not. It carried on, and she gave the boy wine, seduced him, used him as a whim, and in the picture made the act of seduction only a summer interlude. The picture, because of American standards, and I brought in the American standards, be-

cause that is where I live, according to the American standards our standards are a little higher standards. It is a bad power of suggestion. It would register in the mind of young people, and adolescents, as they look at it on the screen, and looked at it as a part of entertainment would ask what is wrong with it. If it was something wrong, it would not be glamourized.

Q. Suppose you did not have adolescents seeing the picture?

A. Did not have what?

Q. Suppose you did not have adolescents seeing the picture, just adults, would that make a difference?

432 A. We reject adultery. In the Code it says a violation of morals.

Q. Any kind of adultery you reject?

A. I cannot think now, but there may be an instance or two when we had adultery, but when we had adultery we hesitated, and we go through the picture to find the circumstances. As a rule, we do not pass a picture with adultery in it. It is a violation of morals.

Q. Do you think it exists?

A. That is one of the problems. When you put it on the screen, you add fuel to it.

Q. What about bigamy, is that a violation of morals?

A. That is a law.

Q. Is it a violation of morals?

A. We both know it would be according to our viewpoint on marriage.

Mr. Hartigan: You mean your viewpoint of marriage?

The Witness: Yes.

Mr. Hartigan: Maybe Mr. Mikva does not agree with you.

The Witness: He is asking my viewpoint, and I
433 am giving it to you.

Mr. Mikva: Q. What about Captain's Paradise?

A. I remember it, he had a wife in two places.

Q. Did you pass it?

A. He went back to his wife. Something happened to him, which was a great relief.

Q. Was it a relief to you?

A. We always look for moral influences. I did not like the example.

Q. Did that picture give you some trouble before you passed it?

A. I think we did.

The Master: Off the record.

• • • • •

The Master: Let the record show Mr. Mikva has no objection.

The Witness: We see twenty-eight thousand to thirty thousand feet of film a day. You have given me a bad time for the last forty-eight or sixty hours. I have been up since six o'clock. We are appointed to a job, and we try to do it very sincerely, and I have been up since six o'clock, and I am mad at myself.

434 The Master: Let the record show the witness wishes to consult the other members of the Board, except the man who is not here.

The Witness: He was not with us long enough.

The Master: And Mr. Mikva has no objection to a short recess for that purpose. Off the record.

• • • • •

Mr. Mikva: Q. Did you show it?

A. Did we show it?

Q. Yes.

A. I cannot answer it. There are times when two will vote for it, and four will vote against it, and two will vote for adult only and two for rejection. Sometimes, when these things are passed, there could be a difference of opinion, but the majority also rules.

Q. Do you remember the film, Gigi?

A. I kind of remember it.

Q. That was the story of a girl who was brought up to be a prostitute?

A. Yes.

Q. Do you think that would be a good theme?

A. No.

435 Q. Do you remember the picture with Shelley Winter in the movie, Place in the Sun?

A. Was that taken from an American Tragedy?

Mr. Hartigan: What is the question?

(Whereupon the last question was read by the reporter.)

The Witness: That picture had a human interest. That was one of the border line pictures, and we were darned if we did, and darned if we did not. There was pathos with that young man who got into something, and before he knew what was happening. That is the picture where the girl drowned.

Q. You passed that?

A. There was a moral there. It was sometime back. This young man was very ambitious, and he loved this girl and became intimate with her, but he was still ambitious, and after that happened he met the other girl, who was very rich, and who could do things for him, and give him a richer life. The moral in it is that a young fellow should use his head and not give in to impulses on that, because he is wrecking his life. He was hanged, or went to jail, or something.

436 Q. Suppose I were to tell you in the American Tragedy, the Place in the Sun, the picture showed he did not kill her, she drowned, and he was electrocuted for killing her?

A. Yes.

Q. Would you say that is a good moral, to electrocute an innocent man?

A. I don't say it is a good moral, but it is a moral in the picture.

Mr. Mikva: That is all.

The Master: We will adjourn until two-thirty o'clock.

(Witness excused.)

* * * * *

Whereupon an adjournment was here taken to the hour of two-thirty, P. M., same day, October 7, 1955.

* * * * *

437 Chicago, Illinois
Friday, October 7, 1955
Two-thirty o'clock p. m.

The parties met pursuant to recess.

Present:

Mr. Mikva,
Mr. Hartigan,
Mr. White.

440 EDITH JOYCE, a witness, called on behalf of the Plaintiff, having been first duly sworn, resumed the witness chair, was examined and testified further as follows:

Direct Examination (Continued) by Mr. Mikva.

Q. Mrs. Joyce, I have only one more question to ask you at this time:

Are you familiar with Justice Schaefer's opinion—Justice Schaefer of our Illinois Supreme Court—in American Civil Liberties *vs.* The City of Chicago? That was The Miracle case.

A. No, sir.

Q. And have you ever read that opinion?

A. If I have, I have forgotten it, completely.

441 Q. Has anyone, and by "anyone" I mean Commissioner O'Connor or Lieutenant Sheehan or the corporation counsel or anyone from the corporation counsel's office ever instructed you as to what standards you were to apply in censoring movies?

A. No. The code was my authority.

Q. In other words, the words that you see in the code?

A. The words that I see, and my interpretation of those words.

Q. Yes.

Mr. Hartigan: That picture or this code?

The Witness: The municipal code. I have it here. This is not my dictionary. It is just a code.

By Mr. Mikva:

Q. Section 155 of the Municipal Code. And that interpretation of the code was in line with the testimony that you gave this morning?

A. Yes, sir.

Mr. Mikva: I have no further questions.

Mrs. Joyce, you have been a most cooperative witness. I appreciate it very much.

442 The Witness: You have been very nice. Thank you.

Mr. Hartigan: Will you bear with me, Mr. Mikva?

Mr. Mikva: Surely.

Cross-Examination by Mr. Hartigan.

Q. Now, when you speak about the censoring of this film under the code, Mrs. Joyce, do you mean the Municipal Code of Chicago, that is, Chapter 155, I believe? Is that the chapter?

A. Yes, Mr. Hartigan.

Q. Now, in a general way, what is the provision of the code with reference to the rejection of pictures?

A. Well, I will have to read it to you. I censor them.

Q. If you please, read it then.

A. (Reading):

"Immoral Pictures—Permit Not to Be Granted.

"If a picture or series of pictures, for the showing
443 or exhibition of which an application for a permit is made, is immoral or obscene, or portrays depravity, criminality or lack of virtue of a class of citizens of any race, color, creed or religion and exposes them to contempt, derision or obloquy, or tends to produce a breach of the peace or riots, or purports to represent any hanging, lynching or burning of a human being, it shall be the duty of the Commissioner of Police to refuse such permit, otherwise it shall be his duty to grant such permit."

Q. Now, Mrs. Joyce, you viewed this movie, The Game of Love, under the terms of that provision of that ordinance?

A. I did.

Q. You have viewed the picture The Game of Love?

A. That is right.

444 Q. And you passed upon it or you rejected it?

A. Yes.

Q. You rejected it for what reason?

A. Well, because it was immoral; because it was against my parental rearing. Anyway, it was immoral, corrupt, indecent, against my—against my religious principles, and again, that it is immoral and unclean, sinful, and corrupt.

Q. Were those the things that you had in your mind when you rejected that picture after seeing it?

A. No.

They were things that stayed with me from the very beginning of the picture to the end, because it was before me, and everything in that picture, from beginning to end, was before me and was against all of my principles.

Q. By "all of your principles," what do you mean, your moral training?

A. My moral training.

Q. Your religion?

A. My religious training, my common sense, de-
445 cency.

Q. Do you have any sense of right and wrong?

A. My sense of right and wrong, yes, sir.

Q. And all of those things went to make up the standards you applied against this picture, is that it?

A. Yes, because continually, from the beginning of that picture to the end, that was affronting me right along. The whole picture was against every—every—I want another word for "good principle" that I believe in, every human principle that I believe in.

Q. Now, Mrs. Joyce, you are a married woman?

A. Yes.

Q. Have you a family?

A. A son and a daughter.

Q. How old?

A. Well, my son is thirty-four, and my daughter is thirty-three. I have grandchildren.

Q. How long have you lived at this address on 104th Street?

A. 25 years.

Q. 25 years?

446 A. Yes.

Mr. Hartigan: I think that is all, if the Master please.

The Master: Wait just a second.

This is off the record.

(There occurred at this point an informal discussion,

outside the record, which, at the direction of the Master, was not taken down by the reporter.)

The Witness: Master, am I through?

The Master: Yes. Thanks very much.

Mr. Mikva: Thank you.

Mr. Hartigan: Thank you very much, Mrs. Joyce.

(The witness was excused.)

Mr. Mikva: All right, you people decide in which order you want to come in, yourselves.

447 BEATRICE H. McGILL, a witness, called on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Mikva.

Q. Will you state your name for the record, please?

A. My name is Beatrice H. McGill: M-c-G-i-l-l.

Q. Beatrice H. McGill?

A. Yes.

Q. Where do you live?

A. I live at 4806 South Parkway.

The Master: What is that?

The Witness: 4806 South Parkway.

By Mr. Mikva:

Q. And you were previously sworn in this case, is that correct?

A. Yes, I have been.

Mr. Mikva: May the record show that she is being called pursuant to Rule 43(b)?

By Mr. Mikva:

448 Q. Mrs. McGill, are you a member of the Police Censor Board?

A. Yes, I am.

Q. How long have you been in that position?

A. I have completed my ninth year. I am in my tenth.

Q. Ninth.

Now, prior to going on the Police Censor Board, what was your occupation?

A. I have been a schoolteacher.

Q. A school teacher?

A. Yes.

Mr. Hartigan: Talk a little louder, Mrs. McGill.

The Witness: I have been a school teacher. I have been a school teacher for twelve and a half years.

By Mr. Mikva:

Q. For twelve and a half years?

A. That is right.

Q. And where did you teach school?

A. I taught in the high schools in Savannah, Georgia.

449 Q. Savannah, Georgia?

A. That is right.

Q. And prior to that what did you do?

A. Well, I was in school, and immediately after I graduated from school I entered the teaching of—

Q. Teaching profession?

A. Yes.

Q. Where did you attend school, Mrs. McGill?

A. I graduated from Atlanta University.

Q. Atlanta University?

A. Yes, an accredited teachers' college.

Q. What teachers' college?

A. An accredited teachers' college.

Q. And you attended high school?

A. In Atlanta.

Q. In Atlanta?

A. Yes.

Q. High school?

A. Yes.

Q. In Atlanta?

A. Yes. There wasn't a high school in Savannah, so I had to go off to school.

450 Q. And where did you attend grade school?

A. Savannah.

Q. Savannah?

A. The public school is in Savannah, Georgia.

Q. Now, how long have you lived in Chicago, Mrs. McGill?

A. Well, I would like to say this before we depart from this:

While I was teaching, I also studied in the small school at Hampton Institute and at Columbia University during the summer.

Q. Were those education courses that you took there?

A. Yes.
Q. Do you have your Master's degree?
A. No, I don't.
Q. Do you have your Bachelor's degree?
A. Yes.
Q. What courses did you teach when you say you were teaching in high school, Mrs. McGill?
A. Well, I taught the eighth and ninth grades in high school, first teaching mathematics in the eighth grade, and commercial and industrial geography in the
451 ninth.

The Master: I am having a little difficulty hearing you.

The Witness: I taught mathematics in the eighth grade, and commercial and industrial geography in the ninth.

By Mr. Hartigan: What would that be with reference to our system of grading in schools here?

The Witness: It would be junior high if you went, but it is still the ninth grade, which would be—

By Mr. Mikva:

Q. The first year of high school?

Mr. Hartigan: The first year of high school?

The Witness: That is right.

The Master: Mrs. McGill, I want to ask you to forget your training about a well modulated, soft, sweet voice. It is hard to hear you.

The Witness: Well, I will try.

Mr. Mikva: Thank you. Perhaps I can set a good example.

The Witness: That is right.

Mr. Mikva: I have been speaking too softly myself
452 and I think with good cause.

By Mr. Mikva:

Q. Mrs. McGill, during your time at Atlanta University, you had quite a few literature courses?
A. Yes, I did.
Q. Could you remember some of the particular literature courses that you had?
A. In high school I had all the required literary and rhetoric requirements that would be accepted by any accredited high school, by the General Educational Board.
Q. And specifically, do you remember some of the lit

erature that you read either in high school or at the university?

A. Yes.

In high school I remember I read Silas Marner by George Eliot.

Milton, Paradise Lost.

Berke's Essay on Reconciliation.

Am I right?

Q. That is right.

A. And David Copperfield.

453 Let's see now. I can't think of any right now.

Mr. Hartigan: This is off the record, Mr. Reporter, please.

(There occurred at this point an informal discussion, outside the record, which at the direction of counsel, was not taken down by the reporter.)

By Mr. Mikva:

Q. Now, Mrs. McGill—

A. Yes.

Q. (Continuing.) —did you ever read The Scarlet Letter?

A. No, I didn't.

Q. Are you familiar with the story at all?

A. No, not at all.

Q. I assume that somewhere along the line you read quite a bit of Shakespeare, did you?

A. Yes, I did.

454 Q. Did you ever read Hamlet?

A. I am not sure that I read it, but I am certain that I saw the play presented while I was in college.

Q. In college?

A. Yes.

Q. Did you ever read MacBeth or see it presented?

A. Yes, I believe so.

I might add this:

I played the part of Mrs. Malaprop in Sheridan's Rivals.

Q. Mrs. McGill, do you remember either reading or seeing Hamlet, is that correct?

A. Yes.

Q. Did the plot of Hamlet offend you in any way?

A. No.

Q. Did the language offend you in any way?

A. It did not.

Q. I would like to read to you just a short quote:
"Let bloat king tempt you again to bed
455 Pinch wanton on your cheek, call you his mouse,
And let him, for a pair of reechy kisses,
Or paddling in your neck with his dam'nd fingers,
Make you ravel all this matter out."
Does that language offend you?
A. Do you mean when I experienced it in college?
Q. Yes.
A. It didn't.
Q. Does it offend you now?
A. It wouldn't.
Q. Do you think it harms you in any way to hear that language?
A. No.
Q. You have been on the Censor Board for nine years, approximately?
A. Yes, I have.
Q. During those nine years there have probably been quite a few pictures that you have rejected or voted to reject?
456 A. Yes, I have, a few.
Q. Have you seen some obscene pictures in your version, in your interpretation of that word, since you have been on the Board?
A. Yes.
Q. Have any of them harmed you by seeing them?
A. Do you mean—I think some of them would bring about a certain amount of resentment and disgust.
Q. I realize that.
If you will answer my question?
A. I don't know what you mean by "harm"—physically?—in that question.
Q. If you don't understand at any time, if you will tell me, I will try to rephrase it.
Have any of them debased your morality?
A. No.
Q. Have any of them aroused your sexual passions?
A. No.
Q. Have any of them caused you to be a worse parent?
457 A. No.
Q. Do you have any children?
A. Yes, I do. I have a very lovely son, 20 years.

The Master: I did not hear the answer to the previous question.

The Witness: "No."

The Master: You shook your head.

The Witness: "No."

By Mr. Mikva:

Q. Have any of them—

Mr. Mikva: Strike that.

By Mr. Mikva:

Q. Have any of them—

Mr. Mikva: Strike that.

By Mr. Mikva:

Q. Referring to the picture The Game of Love, which is the picture involved in this case, did that picture arouse your sexual passions?

A. It didn't.

Q. Did that picture cause you to be a worse parent?

A. You know, I just saw it six months ago. My career as a parent was—it didn't in that short duration.

Q. It did not affect you?

458 A. No.

Q. Did that picture—

Mr. Mikva: Strike that.

By Mr. Mikva:

Q. Do you speak French, Mrs. McGill?

A. No, I do not.

Q. Do you think that someone seeing that picture would have his sex or his sexual passions aroused as a result of seeing that picture?

A. I think some people might.

Q. Which people, Mrs. McGill?

A. Maybe a person younger and more emotional in their interests, and dwelling primarily on sex rather than on other things.

Q. How young would you say, Mrs. McGill?

A. Well, let us take an adolescent through middle age, from adolescent to middle age, which may be a very broad field.

Q. Now, Mrs. McGill, you certainly don't mean to tell me that you are middle age?

A. I really am.

Q. I am forced to disagree with you.

Mr. Hartigan: Nice gesture; nice gesture.

459 The Witness: I am. I am. I don't consider myself—

The Master: Well, don't tell me that there is any disagreement about it.

Mr. Hartigan: Oh, no, I am just saying it was a nice gesture.

By Mr. Mikva:

Q. Mrs. McGill—

A. Yes, sir.

Q. (Continuing.) —I am 29 years old.

A. Yes.

Q. Do you think it would arouse my sexual passions?

A. I think it would depend on your trend of character and your environment of life and what you were brought up under, and all the things that have been stressed and so forth.

Q. You think it would arouse the sexual passions of normal average persons?

A. No, I don't.

Q. Do you think it would arouse the passions of a sexual degenerate?

A. Of that I am not in a position to say. I don't

460 know.

Q. Do you have—how old is your son?

A. Twenty.

Q. Do you think it would arouse the sexual passions of your son?

A. No, because he has been very lucky. I think he has been. He has had a high school that has taken care of some of those little sex situations, and he has had a mother that has discussed it with him freely.

Q. So that he would not be harmed by seeing this picture?

A. I don't think he would.

Q. He might even enjoy it?

A. No, I don't think so. I would not even want him to see it.

Q. And similarly, you would not want me to see it?

A. I couldn't say that I don't want you to see it. I think you are capable of deciding.

Q. Isn't it a fact that when you rejected the film you prevent everybody in the City of Chicago from seeing that film?

461 A. You are stating when I reject the film you can't see it. It is due to the fact that I am interpreting that film in response to the ordinance that is given me to interpret it. That is my barometer.

Q. Now, returning to that ordinance, which is in question here—

A. Yes.

Q. (Continuing.) —did I understand you correctly to say that the normal, the average person, would not have his sexual desires aroused by that film?

A. I said I believe that they would. I am the authority.

Q. If I were to suggest to you that that ordinance boils down to the basis that you are only to find the film obscene when it tends to arouse the sexual desires of the normal, average person, would that make a difference in whether you accept it or reject it at that position?

A. In accepting my position as censor, I feel it is my responsibility to use the only barometer or the only
462 standard that I have at my command in judging these pictures, and that is the ordinance.

Q. I see.

A. That is all.

Q. Now supposing I were to tell you that the word "obscene" in that ordinance meant that—rather, that if you were to find a motion picture is obscene within the meaning of the ordinance if, when the picture was considered as a whole, its calculated purpose or effect was substantially to arouse the sexual desires, would that be a good definition of "obscene"?

A. Well, I could say in a broad sense.

Q. And suppose I were to add "and," not "or," but "and," if the probability of its effect, and the probability of arousing sexual desires is so great as to outweigh whatever artistic or other merits the film might have, would you say that that was a good definition of "obscene"?

A. Well, I am not so sure that would be a good definition of "obscene."

Q. Do you have a reason why? Could you give
463 your reasons?

A. Because you are talking about this particular picture?

Q. Yes.

A. My point of view is that it is artistic.

Q. That it is not artistic?

A. No, no. That it has artistic values; that its artistic values does not exceed the prominence of sex that is interwoven into this picture.

I won't accept that the artistic side of it exceeds—well now—

I think it is very slightly presented in this particular picture. That is my interpretation.

Q. That is your opinion?

A. Of this picture.

Q. Of that picture?

A. That is right.

Q. Didn't you say, though, that you thought that the normal, average person would not have his sexual passions aroused by this picture?

A. Yes, I did.

464 Q. Let me ask you this:

Do you think the picture has any artistic value?

A. What do you mean, from the standpoint of production or photography?

Q. What do you mean?

A. I think it has very little artistic—

Q. Do you think that the photography was good?

A. If I am supposed to judge, am I supposed to judge the photography of the picture?

Q. I am asking you.

A. I am talking about the contents of the story.

Q. Do you think the photography was good?

A. Oh, yes.

Q. Did you consider it?

A. It is something that I should say you don't consider.

Q. You don't consider photography?

A. No.

Q. Do you think the acting was good?

A. Yes, I do.

Q. You think the acting was good?

465 A. Yes, I think it was good.

Q. Did you think that they accurately portrayed the parts that they were supposed to play—without regard to the part that they were supposed to play, did they do a good job of performing the parts they were given to perform?

A. Yes.

Q. You do think so?

A. Yes.

Q. Do you think that the story was a good story?

A. I do not.

Q. Do you think it was well told? You know, we are being frank here, Mrs. McGill. I am sure that somewhere along your career you have heard what is commonly known as a "dirty joke;" sometimes a dirty joke, even though it has obscenity, or whatever you call it, it is sometimes well told, or it is not well told.

A. In other words, you mean to ask me, did it convey just what it wanted to convey?

Q. Yes.

A. I think it did.

466 Q. Do you think that the story was well told?

A. It conveyed, to my impression, that plot.

Q. You think there was a plot in this movie?

A. Based on sex emotion, sex participation.

Mr. Hartigan: I still don't understand you. Mrs. McGill. You are lowering your voice.

The Witness: He said, "Do you think it has a plot to the—a plot to the picture?"

If sex is to be accepted as a plot, yes.

I am just a soft-spoken person. I am sorry.

Mr. Hartigan: Your husband is a fortunate man.

The Witness: My husband is a lawyer. He is deceased. He was a lawyer.

Mr. Mikva: That may account for why you are acquitting yourself so well, Mrs. McGill.

By Mr. Mikva:

Q. Mrs. McGill, have you ever read Colette's novels?

A. No, I have not.

Q. Do you think she was a classicist?

A. Let me say, if she has been accepted by fifty
467 scholars of literature, I should say that I think that is one of the requirements to fall into that category.

Q. How would you define a classic, if you can?

A. Well, I would say it is the accepted and proved works of an artist and an author, I should say, featuring maybe literature or art that has been passed down from the past, and is being now used as a model or a guide or a standard by which we judge other—

Q. Could it, within your definition, mean something that was written yesterday or last year?

A. I would not think so.

Q. Could it be something that was written ten years ago?

A. Yes, it is. I would think—I am not an authority because my preparation dealt more with education psychology, and I am just giving just what I might imagine.

Ten years ago, if it had been accepted by some great scholars or some authority in that particular field, if they accepted it, it would be all right.

468 Q. If it were a classic, would that make any difference to you in determining whether or not the film should be accepted or rejected?

A. It would not, not this.

Q. It would not?

A. Not this film.

Q. What about any other film? Does the fact that the film is a classic—

A. I am going to stay right now on this particular film, regardless of what her other novel was.

We still must take into consideration the production and the end of it. She might not have wanted this picture to have been produced in the way where sex was the predominating factor.

The production to me, it was too much on sex.

Q. Suppose I suggested that she participated in the production, would that make any difference to you?

A. No, it would not.

Q. It would not.

469 Now, would it matter to you—

Mr. Mikva: Strike that.

By Mr. Mikva:

Q. Would you say that there are some classics that deal essentially with the subject of sex? With the subject of sex?

A. Solely?

Q. Or the predominant theme is one of sex.

A. Not that I know, but I imagine it could be. I would not be interested in them because—

Q. And if a movie was made out of one of those classics, would you say that you would pass such a movie or reject one?

A. It would depend upon how skillfully a prudent man produced it and how he handled these events.

Q. Well, by "skillfully," what do you mean?

A. Well, you can—we might say or see pictures sometimes that may have in them an affair that is handled so well that you are really left in doubt.

Q. As to how it really comes out?

A. Whether it actually took place. I am speaking
470 as I felt, for myself, as a censor.

Q. So that is you are not sure whether the affair took place or not, then it is all right?

A. And the dialogue and the sub-titles and the situations in the scene does not convince, then, yes.

Mr. Mikva: May we go off the record?

(There occurred at this point an informal discussion, outside the record, which, at the direction of counsel, was not taken down by the reporter.)

By Mr. Mikva:

Q. Mrs. McGill, would you agree with the statement that sometimes a suggestive situation, that is as you put it, where you are not sure how it came out, can tend more to arouse sexual desires than a situation we actually know what happened?

471 Would you agree with that statement?

A. Well, you will have to give me a real, concrete example before I can.

Q. Well, now, suppose you look at a medical book. Suppose anyone looked at a medical book in which was shown a picture of a man's privates or a woman's privates, do you think that would tend to arouse sexual desires more than if you saw a woman who has no part of her private exposed, but her bosom was uncovered but her slip was off the shoulder, just above the bosom, and she was lying in a languorous pose—which do you think would tend more to arouse sexual desires?

A. Well, going back to the medical book again, the man being exposed—I am including the woman being exposed—you start off with the man and I am answering that first.

Q. Yes.

A. The man being exposed, I would not—I would accept that.

Q. Supposing it was a woman exposed in the medical book?

472 A. It would be the same thing.

Q. Then do you think that would tend to arouse less sexual desires than the other situation?

A. Would you repeat the second situation?

Q. We now cover the situation where there is a woman whose private parts are exposed in a medical book, a picture of a nude woman in the medical book, completely nude, and comparing that with the effect that a woman, none of whose private parts or bosom are exposed, and she is lying in a languorous pose, with her slip off the shoulder and showing high heels and black silk stockings, would that tend to arouse greater sexual passions than if you went down to the beach on a summer's day?

Would you say that that would tend to arouse the sexual passions more than in the medical book picture?

A. Well, I don't know that.

Q. You don't know?

A. That is not a very good illustration of sexual, to arouse sexual desire. A woman may just be fully clothed, lying on an inclined position.

473 To me it is not a good illustration but—

Q. Do you think that that would arouse sexual desires or not?

A. Not in me.

Q. Not in you.

Do you think it might in some man?

The Master: This is off the record, Mr. Reporter, please.

(There occurred at this point an informal discussion, outside the record, which, at the direction of the Master, was not taken down by the reporter.)

By Mr. Mikva:

Q. Let us take as the first part of our illustration, the medical picture again, that is the medical book picture.

Now, which thing would more tend to arouse sexual passions, the picture of a completely nude woman in
474 the medical book, or the scene between Phillipe and Vinca where they are sitting on the haystack?

A. The latter.

Q. Mrs. McGill, do you know that Phillipe and Vinca had intercourse on that haystack?

A. Do I know it? I have all the reason to believe.

Q. Did you see them have intercourse?

A. I don't think that you will ever see that on the screen.

Q. To you, in other words—isn't it correct to say that

you interpreted it or considered that they had intercourse at that haystack, is that correct?

A. Did you say conclusion?

Q. You drew the conclusion?

A. Without any reason?

Q. I am sure you had a reason.

A. If I drew the conclusion, that is right.

Q. Now, would you say it is possible for someone else to see that scene and draw a contrary conclusion?

475 A. I believe he could.

Q. Mrs. McGill, did you see any of Phillipe's private parts in the movie?

A. I did not.

Q. You did not see his testicles?

A. I did not.

Q. At any time?

A. I did not.

Mr. Mikva: I have no other questions.

The Master: I just want to ask some questions.

This is off the record.

(There occurred at this point an informal discussion, outside the record, which, at the direction of the Master, was not taken down by the reporter.)

By Mr. Mikva:

Q. Mrs. McGill, do you censor all movies that come before you, is that correct?

476 A. We censor all movies showing in the City of Chicago, with the exception of news reels.

Q. And who told you not to censor news reels?

A. Who told me?

Q. Yes.

A. I don't decide the policy of the Censoring Unit.

Q. Who does, do you know?

A. I don't know.

We are under the Commissioner of Police.

All I know is that I am there to view the picture that is put on the board, on the screens. I have nothing to do with that. I have no decision on that.

Q. Similarly, if there were movies, such as movies shown in penny arcades, or burlesque shows, that did not come before you, you don't know anything about it, then, as to who censors those?

In other words, you only censor movies that come before you, is that correct?

A. May I speak off the record?

Mr. Mikva: Yes.

477 (There occurred at this point an informal discussion, outside the record, which, at the direction of counsel and at the request of the witness, was not taken down by the reporter.)

• • • • • •

By the Witness:

A. Well, it does not come strictly into our department.

Mr. Mikva: Fine.

Thank you again.

(The witness was excused.)

The Master: One of the witnesses asked me for a short recess.

Is that agreeable?

Mr. Hartigan: Yes.

Mr. Mikva: Yes, surely.

The Master: For about five minutes?

Mr. Hartigan: Yes.

(A short recess was taken.)

478 Mr. Mikva: May we go back on the record?

Mr. Hartigan: Yes.

IDA GREENSPAN, a witness, called on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Mikva.

Q. Will you state your name, please?

A. Mrs. Ida Greenspan.

Q. And where do you live, Mrs. Greenspan?

A. 1508 West Farragut.

Mr. Mikva: May the record show that Mrs. Greenspan is being called pursuant to Rule 43(b)?

The Master: This is off the record.

(There occurred at this point an informal discussion, outside the record, which, at the direction of the Master, was not taken down by the reporter.)

• • • • • •

479 By Mr. Mikva:

Q. Are you a member of the Police Censorship Board, Mrs. Greenspan?

A. Yes, I am.
Q. How long have you been in that position?
A. I just completed my ninth year.
Q. What is your salary?
A. $302 a month. I forgot to add the fifty cents on there that I did not recall.

The Master: This is off the record, Mr. Reporter, please.

(There occurred at this point an informal discussion, outside the record, which, at the direction of the Master, was not taken down by the reporter.)

* * * * *

Mr. Mikva: Back on the record.

By Mr. Mikva:

480 Q. Mrs. Greenspan, prior to being on the Police Censorship Board, what was your occupation?
A. Well, I worked for the Herald-Examiner and the Evening American here in Chicago.
Q. And what was your position then?
A. I was with the Circulation Department.
Q. What did you do for the Circulation Department?
A. Well, I worked on the books of the Return Department.
Q. You mean the books of the newspaper?
A. And the bookkeeping, and stuff like that. I had to do with the Credit Department.
481 Q. How long were you in that position?
A. I was in that position for fifteen years.
Q. Fifteen years?
A. Yes.
Q. Prior to that what did you do?
A. Prior to that I went to school.
Q. Where did you go to school?
A. The John Rogers Grammar School and the Joseph W. Medill High School.
Q. Did you graduate from high school?
A. Yes.
Q. Did you have any literary courses while you were in high school?
A. The usual ones.
Q. While you were with the newspaper, did you review books, or write reviews of books?
A. No.
Q. Were you in the editorial department?

A. No.

Q. Your entire time was spent in the Circulation Department?

A. Yes.

Q. What magazines do you subscribe to?

482 A. I don't subscribe to any magazines. I buy them at the newsstand.

Q. What magazines do you buy?

A. I buy Life, and the Readers Digest. I don't have much reading time, my eyes are pretty tired when I get home.

Q. Do you read the Saturday Review of Literature?

A. No.

Q. Do you read the book reviews in the Chicago newspapers?

A. No, I don't.

Q. Do you have an opportunity to do much reading of books?

A. Not very much, my time is pretty much taken up.

Q. Could you name some of the books you have read over the past few years?

A. I have read quite a bit, but nothing in particular, just anything that came along.

Q. Can you give us the title of any book you read in the past few years?

A. I don't believe I read any big books, just stories in magazines, but nothing much of that.

Q. Would you say your reading tended more to the

483 classics or to the modern?

A. Modern.

Q. How do you define classics?

A. Any authority whose work is accepted as being a standard of excellence.

Q. Does the fact that a movie is made out of a book which is termed a classic, does it have any tendency on your rejecting a movie made from it?

A. No, it does not.

Q. That is true, no matter how classical it is?

A. If it is obscene, it is obscene.

Q. What do you mean by obscene, Mrs. Greenspan?

A. Anything which is immoral, shocking, vulgar or anything offensive to decency.

Q. Does it necessarily, within your meaning of obscenity—to be within your definition of obscenity, have to arouse passion?

A. More or less, yes.
Q. How about immorality?
A. It is wickedness, vice and anything lewd.
Q. Could something be obscene that did not affect the sex passion or the physical desires?
A. I would not say so.
484 Q. So, for something to be obscene, it must arouse the sexual desires?
A. It shocked me.
Q. Answer the question, does the movie, Game of Love arouse your sexual desires?
A. In my position as movie censor, I would say it did.
Q. It did arouse your sexual desires?
A. Yes.
Q. What scenes in the movie had that effect on you, Mrs. Greenspan?
A. More or less the older woman. The older woman, her behavior was really responsible. The children themselves, were kind of wishy-washy. Her affair with the young boy, that got me.
Q. When you say it got you, what do you mean by that?
A. I know I have to go back to it shocked me. It did tend to arouse my sex desires.
Q. Did it have any effect to have you emulate your desires?
A. It did not.
Q. Did you find her conduct shocking?
485 A. Yes.
Q. You would not want to pattern your behavior after her behavior?
A. No.
Q. Yet you said it aroused your sex desires?
A. It did, a little.
Q. Would you say the picture had any artistic merit?
A. It did not have any artistic merit.
Q. Did you notice the camera photography?
A. No, we have to look at the film for other things.
Q. Did you think the acting was good?
A. I thought the acting was good.
Q. Did you think the movie had a plot?
A. I did not think it had a plot, outside of the one thing of sex.
Q. Outside of that, did you think it told the story well?
A. It did.

Q. Then would you say it was artistic?
A. I don't call it artistic, because I don't expect to see such things in a film.
Q. What was that?
486 A. I did not expect to see it, and I would not call anything artistic that is as vulgar as that.
Q. Can a painting of a nude woman be a work of art, in your opinion?
A. Yes, it can.
Q. Can a painting of a nude man and a nude woman be art in your opinion?
A. It depends on the picture. You can go to the Art Institute and see it.
Q. That is not offensive?
A. In its place, it is not. It depends on the placement.
Q. Suppose someone took the picture and showed it on the motion picture screen, would that be all right?
A. It all depends on the type of the picture it would be.
Q. Suppose it was called an art masterpiece and was one series of nude women from famous paintings, would that be O.K.?
A. That would be O.K.
Q. That would be O.K.?
A. Yes.
487 Q. Do you have any children, Mrs. Greenspan?
A. No, I don't, sir.
Q. Would you say that the Game of Love is a realistic picture?
A. No, I would not.
Q. In other words, you do not think it is normal?
A. It is not a normal procedure.
Q. Does a girl of fifteen years of age have sexual desires?
A. To my way of thinking a girl of fifteen is a child.
Q. Do you think she has sexual desires?
A. I would say, first, I would have to call my niece at fifteen years a girl, while someone else might be a full grown woman.
Q. Do you think the situation in Game of Love might occur in real life?
A. I am not saying it can, but it might occur.
Q. In the sense, could you say it is realistic?
A. It might be realistic, but it is not acceptable.
Q. Acceptable to what?
A. To a code of decency.

Q. What is a code of decency?

488 A. Knowing right from wrong, and trying to do the right thing.

Q. Do you think adolescence goes through a period of conflict when growing up?

A. Yes.

Q. Do you think it normal for a girl of fifteen years to have sexual desires and try to control them?

A. Yes.

Q. And some might control them and some might not control them, is that right?

A. Yes.

Q. Is that the type of conduct which might occur?

A. Yes.

Q. Suppose it was a true story which was told in the Game of Love, it would make a difference to you?

A. No, I don't believe it would.

Q. As a result of seeing the Game of Love did your conduct change in any way?

Mr. Hartigan: What kind of conduct?

Mr. Mikva: Q. Do you understand the question?

A. Yes.

Q. Or would you prefer me to rephrase it?

489 A. I would prefer to have you rephrase it.

Q. As a result of your seeing the picture Game of Love did you, after seeing the picture, deviate from your normal sexual behavior in any way?

A. I did not.

Q. Do you think that someone else who did see it might deviate from their sexual behavior?

A. They might.

Q. Who might those people be?

A. Any normal man, woman or girl, it might be anyone.

Q. They could change their sexual behavior as a result of seeing the picture?

A. Yes.

Q. Do you think that that picture would affect adults, who have the same background that you did, to change their sexual conduct?

A. It might.

Q. If might?

A. Yes.

Q. How do you know that?

A. I am saying it might, I don't really know, I say it might.

490 Q. Have you read any books on the physical behavior of sexual psychology?

A. No.

Q. There was some testimony this morning relating to who you are to protect in your position. How are you viewing your position, are you to protect the weakest person, or the average person?

A. We are to protect all persons.

Q. Suppose I took the picture, Snow White, have you seen it?

A. Yes.

Q. If I told you the picture, Snow White, might arouse the sexual desires of a sex degenerate by seeing all those men around a girl, would that be a cause for it to be censored?

A. No, I would not say that.

Q. Suppose I told you a picture of that type would affect a sex degenerate—

A. They do not make pictures for sex degenerates, they make them for the average person.

Q. The fact that a sex degenerate might be aroused is no reason for banning the picture?

A. I would not say, that you would not have those
491 sex degenerates to be shocked at such a picture as that.

The Master: Are you talking about Snow White?

A. I said Snow White was not banned. I am talking about a picture we have here, which is the Game of Love.

Q. Suppose I told you that the picture, the Game of Love, had shown fifteen months in the city of New York, and played to full houses; and during that period, and subsequent to that period there has been no appreciable increase of illicit love, or rapes, would that make any difference to you?

Mr. Hartigan: You understand we have a standing objection to these questions?

The Master: Yes.

A. No, when I got the position I was told to call them as I see them. That is how my vote has been. I have no control over what would happen in New York or in Chicago. As far as I am concerned, I call them the way I see them.

Q. Were you given a standard by anyone, outside of what is in the Code?

A. No.

492 Q. Did anyone give you a definition of obscenity to use? Or the definition of immorality, or a definition of—

A. No, they have not.

Q. How about obliquy?

A. Isn't that to hold in contempt?

Q. Is that what it means to you? We are not concerned with the dictionary meaning, we are concerned with your use of the word.

A. At the present I am a little excited.

Mr. Mikva: I don't mean to excite you.

The Witness: I know that.

Q. What does the word depravity mean to you?

A. Wickedness to corrupt.

Q. Does it mean abnormality, necessarily?

A. It could mean abnormal.

Q. Have you read any of Guy de Maupassant?

A. No, I haven't.

Q. Do you think he is a classicist from what you have heard about him?

A. The one book I started to read from him, I did not care for, so I would not.

Q. You would not consider him a classicist?

493 A. No.

Q. Would it surprise you if I told you that Collette's books, including the book from which the Game of Love is taken, circulates freely in the Chicago Public Library?

A. I would not be surprised at that.

Q. And that children can get the book?

A. It would not surprise me.

Q. Do you think it is a good idea?

A. No, I don't.

Q. That the children should be able to get the books?

A. No, I don't.

Q. Do you believe it is good for adults to get the books?

A. If all she has written has the same theme, or story, behind it as the Game of Love, I think she must be a little bit—I should not say depraved, but I don't think it would be healthy for children to go into the library and take books like that.

Q. How about adults?

A. I don't know about them.

Q. Do you think it would be a good idea to have a 494 law to keep people from getting at them?

A. Yes.

Q. Suppose the book was placed in a newspaper of general circulation, say the Chicago Times, do you think there should be a law to restrain them?

A. There is no law censoring the newspapers, and whatever they pick up they can print.

Q. The newspaper can print the story?

A. Yes.

Q. A book can print the story, but a newspaper should be censored, is that right?

A. There are lots of books I would not recommend for reading.

Q. And I assume you would not read them, is that right?

A. Yes.

Q. You think a newspaper should not be restrained in that manner?

A. Sometimes I think they should be, but they are not.

Q. You think it would be a good idea to restrain them?

A. I don't believe it would be a good idea, in most 495 cases.

Q. Suppose the newspaper put the book of the Game of Love, or Le Ble en Herbe into print, you would not think it would be a good idea?

A. No.

Mr. Mikva: That is all.

Direct Examination by Mr. Hartigan.

Q. Mrs. Greenspan, you voted to reject the picture, Game of Love?

A. Yes, I did.

Q. You voted to reject it, because it was obscene and immoral?

A. Yes, I did.

Q. The conduct of this fifteen year old girl, who was one of the characters in the picture, with this fifteen year or sixteen year old boy, what conduct did you have in mind with reference to those two people? Do you remember their conduct in the picture?

A. Yes, I do. You mean, with reference to the way they walked around the same home and being thrown 496 together? Is that what you mean?

Q. From the picture, did you get the idea that this boy and girl had sexual intercourse?

A. Later on in the picture, near the end, they did. It was pretty obvious.

Q. That was the impression you got?

A. Yes.

Q. Do you remember the scene in which that occurred?

A. It was in the haystack.

Q. After they repaired to the home from the haystack, was there any indication of their having been in the haystack, do you remember that?

A. I really do not recall. I know they were there, but it has been some time ago.

Q. Referring to the conduct of the older woman with Phillipe, the boy in the picture, what happened there?

A. I know they spent the entire night together.

Q. Did you get the impression that they had sexual intercourse?

A. Yes, I did.

Q. More than once?

497 A. We could not say how many times, but we did know after that he was a sixteen year old, and one night, in the dialog.

Q. The picture was obscene and immoral to you, is that right?

A. Yes.

Q. Did you regard the conduct of the young girl with Phillipe as normal with that boy?

A. When the picture started, yes. The parents were to blame, they went on and neglected the children. It started on as a normal conduct with children.

Q. Then the conduct in the haystack, where you think they had sexual intercourse, did you regard that as normal?

A. No, I did not.

Q. You regard that as a breach of morals?

A. Yes.

Q. Did you think the conduct of the older woman with Phillippe was a breach of morals?

A. Yes.

Q. You regard the whole picture as a delineation of sex?

498 A. From the beginning to the end it was nothing but sex.

Q. You spoke about calling them as you saw them?

A. Yes.

Q. What do you mean by calling them? When you took the job as censor, you were to call them as you saw them?

A. To call them as I saw them.

Q. You were to give your opinion of a picture, as you saw it, is that right?

A. Yes.

Q. In giving your opinion of the picture, Game of Love, calling it as you saw it, what standards were within you, or what standards did you use in arriving at the judgment of rejecting the picture, after you saw the picture?

A. I thought it was vulgar throughout the whole thing.

Q. What was in you that prompted you to think that way?

A. The affair between the older woman and the young little boy was one of the motives.

Q. What was the thing in you?

499 A. It was obscene.

Q. Your sense of religious principles, or what feelings caused you to reject the film, and which caused you to believe the film should be banned?

A. My upbringing.

Q. What in your upbringing did you bring to the fore to reject the picture?

A. I have never seen anything like that on the screen, especially for entertainment.

Q. What was your upbringing?

A. I always led a clean life, always trying to live right, and trying to respect everybody. I certainly would not like to see such goings on anywhere.

Q. The demonstration you saw in the picture was contrary to your upbringing and teaching of morals and ethics and everything else, is that right?

A. Yes.

500 *Cross-Examination by Mr. Mikva.*

Q. Did you think the dialog was unfit?

A. Yes.

Q. Did you think the dialog was obscene?

A. Yes, it was.

Q. When you speak of the dialog, you mean the English subtitles?

A. Yes.

Q. What did you find obscene in the English dialect?

A. Such dialog, "You are my little whim", and "You only want me for one hour", "I don't want to be alone

with you anymore". "I prefer to give than receive". "You could give me something, but what I give you will not be much". "Little beggar, you do not know what you can give me", and they both walk into the room and close the door.

Mr. Mikva: That is all I have.

(Witness Excused).

* * * * *

501 JESSIE JORGENSEN, was called as a witness by the plaintiff herein, under Rule 43-B, and being first duly sworn, was examined and testified as follows:

Cross-Examination by Mr. Mikva.

Q. Will you state your name for the record?
A. Jessie Jorgensen.
Q. You have been sworn previously, is that correct?
A. Yes.

Mr. Mikva: May the record show she is being called pursuant to Rule 43-B.

Q. Where do you reside?
A. 7158 Normal Boulevard.
Q. Are you a member of the Police Censor Board?
A. Yes.
Q. How long have you been a member of that Board?
A. For the last two years.
Q. What was your occupation prior to that?
A. I was a housewife for forty years, and before that I was a stenographer.
Q. How long were you a stenographer?
A. About six years.

502 Q. Before that, what were you?
A. (No answer by the witness.)
Q. Were you in school?
A. I graduated from elementary school and I went directly to a business college. I worked and went to a business college at night.
Q. Did you graduate from high school?
A. No, I did not.
Q. You graduated from an elementary school and went to a business college?
A. Yes.

Q. Where did you go to the business college?

A. It was a small school in the neighborhood. They taught business courses.

Q. Did you have any literary courses in business college?

A. No.

Q. Did you have any literary courses in grade school?

A. Just the regular reading course. However, I might say, I have read quite a bit of literature. While the children were in college, I read most of the required
503 books that they had in school, and I read books he recommended.

Q. Will you name some of the books you have read?

A. "You Cannot Go Home Again," by Thomas Wolfe. Right now I am reading the story, "Apple Tree", by Galsworthy. "The Open Book" by White.

Mr. Hartigan: Q. Would it be Daniel J. White?

A. No. I have read some books by the great philosophers. I have read "Plato's Republic".

Q. What about "Plato's Republic". Let us stop a few minutes on that.

A. Yes.

Mr. Hartigan: You are not going to stop long on that.

Mr. Mikva: No.

The Witness: He can stop on that. The only thing I got from the book was the Greek justice tempered with mercy.

Q. Do you believe his regulation of the strong for the weak?

A. I don't know, but I think we would have a better civilization if we did consider the weak.

Q. As a censor, how do you view your job? Are you there to censor the pictures to protect the weak
504 against themselves?

A. No.

Q. Who do you protect?

A. I am a part of the Police Department. I am a part of the Police Department to keep the morales as clean as possible. I don't believe the movies have the ethics that the newspapers have, or lawyers. There are questionable lawyers.

Mr. Hartigan: Do you mean to cover all lawyers, or questionable lawyers?

The Witness: Questionable lawyers, but as a group

they have ethics to protect the public. The movie industry does not have the ethics, or there would not be a need for more ethics.

Mr. Mikva: Q. Do you believe the newspapers have ethics?

A. Yes.

Q. Do you read about rape in the newspapers?

A. Yes.

Q. They are given a great deal of publicity, is that right?

A. In a way.

Q. Is that bad for society?

505 A. I think we should know what is going on.

Q. Do you believe movies, that tell a true story, aside from novels, have a different standard?

A. I think they should be covered by our standards.

Q. If you read about a rape in a newspaper, that would not bother you?

A. I would feel sorry for the people involved.

Q. You do not think the newspapers should not print the story?

A. I think they should not publish one-half of it, or print the story on an inside page where it is not so noticeable.

Q. If the newspaper published the story, you would be opposed to it?

A. There is a difference between fact and fiction, depending on how it was portrayed, and depending on the senses it happened to. The scene of filth in the movies, and everything you are talking about, appeal as much to the senses, as well as the mind. If it was about obscenity, I don't believe you can define it and make it mean one thing to you, and another thing to me, according to what we call the decent thing. Am I right or wrong?

506 Q. Now, Mrs. Jorgensen, you view your job, in which obscenity and immorality are the standards that you apply, according to the code?

A. The standard of decency. I realize decency is the pattern of the human behavior. The words you are examining on mean so many things. How are you going to pin down all these things? You know it means one thing to you, and another thing to me, and you are trying to pin me down on your ground, and it is impossible.

Q. You mean the meaning of obscenity is different to me than it is to you?

A. Yes.

Q. What does it mean to you?
A. Vulgar, impulsive, in something which you know is impulsively wrong, without having to be taught. It is a part of me.
Q. Does it have to arouse your sexual behavior to be obscene?
A. No, it does not.
Q. Something not having to do with sex could be obscene?
A. Yes, to me.
507 Q. Did the movie, Game of Love, arouse your physical desires?
A. No.
Q. Did it affect your sexual pattern in any way?
A. No.
Q. Do you think it would arouse any sex degenerate?
A. I have no idea.
Q. Do you think it would arouse the sex passion of the country?
A. I have no idea of the sex passion of the country.
Q. It did not affect your sex desire or pattern?
A. No.
Q. The effect on your sex pattern and desires had nothing to do with your banning the film?
A. Will you repeat?
Q. The effect the film would have on the sex pattern of the people in Chicago, you or me, or anybody, was not the basis on which you rejected the film?
A. I was not thinking of the sex pattern of anybody.
Q. But you think it was obscene?
A. I do.
508 Mr. Mikva: That is all the questions I have.

Examination by Mr. Hartigan.

Q. Mrs. Jorgensen, you are a housewife?
A. Yes.
Q. What does your family consist of?
A. I am a widow. I have three sons and four grandchildren.
Q. How old are your children?
A. Thirty-eight, thirty-four, and I have a son twenty.
Q. You rejected this picture, The Game of Love, because it was obscene and immoral?

A. I rejected it, because it was not up to what is the accepted standard of decency.

Q. What do you mean by that?

A. By decency I mean our pattern of behavior.

Mr. Hartigan: That is all.

509 *Recross Examination by Mr. Mikva.*

Q. Mrs. Jorgensen, as I understand, you have three categories that you can put the movie in, either general, adult only or reject it, is that right?

A. Yes.

Q. What are the different standards that you apply to determine whether something shall be for general distribution, or for adults only?

A. Sometimes, in an adult picture, we have an illicit love affair, and you can take a little out, here and there, and have something which you feel is acceptable, but in this picture, it starts out with sex, and proceeds and proceeds. The dialog is questionable. I don't want to correct anything which was said before me, but I think when the mature woman talked to the boy, she emphasized her words and said, "You little beggar, you do not know what you can give me." She comes back again and again and wakens the physical desires, and after this the two children get together. There is nothing you can take out. You could not take it out, because it would ruin the picture. You
510 cannot take out the adolescent angle, because it would ruin it, and you cannot pass it as acceptable for the screen.

Q. What do you mean by ruining the picture?

A. I mean there would be nothing left. You cannot show one-half of it and have a picture. You would ruin the continuity of the picture. He being with the young girl, and they are fond of each other in a normal way, and after he has been with the older woman is when I think he commences to assert himself.

Q. Could you save the first half of the picture? He does not meet her then.

A. It is the going back and forth and the locked doors. There is such a temptation to go into the room, he tosses the key out of the window.

Q. You mean, with the young girl?

A. Yes, you are talking about the first part of the picture.

Q. Am I correct in saying that when there is an illicit affair, whatever that means to you, of some kind, if otherwise you find the picture all right, you will put it in an adult only stamp?

511 A. You have to tell me more about it.

Q. Let us take a specific example. There is a book, the Scarlet Letter, have you read that?

A. Yes.

Q. The Scarlet Letter is a book about a woman who committed adultery with a man. This was in the Puritan times, and she was forced to wear a scarlet letter A on her bosom. That is clear. Do you think the children would not be able to see the picture?

A. Children would not know what adultery is.

Q. Do you think a fifteen year old child would know what adultery is?

A. Yes, you would know what adultery is if you have the right type of parents.

Q. You do not think they should see the story?

A. If the theme of the story is adultery, no.

Q. The theme is adultery.

A. Then it is not good for anybody.

Q. It is not good for anyone?

A. It should not be seen by children. You say the entire thing is adultery?

Q. Yes.

512 A. It is not acceptable.

Q. If I said I read the book as required reading in school, would that shock you?

A. Not a bit.

Q. Why would it be all right for me to read a book when I was fifteen, and not see the movie when I was fifteen years old?

A. I cannot answer that, really. There is something about seeing a thing that impresses you more than reading. To get anything out of a book, you have to have some knowledge in reading about the subject, but to see the thing portrayed, you might get it quicker.

Q. The communication to you was more quickly?

A. For some ages.

Q. As far as you are concerned, the Game of Love would not be acceptable for children or adults?

A. I don't believe it is suitable for showing, because it does not come up to our standards. You speak about the French people. I think it is an acceptable thing in

France, but not in this country. I don't believe we feel that way about such things.

Q. Would you say our sex behavior is higher than
513 the French?

A. Yes, I would say they were.

Q. Would you say they were higher than most countries?

A. Yes, I would say so.

Q. What do you mean by higher?

A. We conform more to the idea of the church on marriage. I like to think we are living in a Christian country, with Christian principles, and we should remember that is the only reason we have the United States of America, because of our Christian principles. Adultery has no part in it.

Mr. Mikva: That is all.

514 *Examination by Mr. Hartigan.*

Q. How would you describe the acts you saw in the Game of Love?

A. Describe them?

Q. With reference to them being indecent or obscene?

A. I am thinking of the two children, as they came to the summer resort, how happy and carefree they were. They apparently did not think too much about sex. There is no evidence of their having been together, until after he had the affair with this older woman. I don't know, I would say the young people had a summer vacation, and were sowing their wild oats.

Q. How would you describe the conduct of the older woman with the boy, or the boy with the older woman?

A. I felt pity for the boy. She was rather an attractive woman, and the setting was a mediocre sort. She lived in this big home, and was in negligee, and she offered him a drink when he came in the house. He said he did not drink. We see him in her bedroom in her bed, and her in the bed, but not together. Her remarks to the boy
515 saying, "You little beggar, you do not know yet"—with the emphasis on the word "yet", "What you can give me".

Q. How would you describe that, in a word, would you call it obscene, or immoral or what?

A. I would say that conduct was not acceptable for our society. Is that the right conduct for our people?

Q. What would be your definition of the standard?
A. It is a circle. Your standards of decency are the things you know of, your life, your natural inclinations, the things you have been taught in school and the things you have been taught at home.
Q. The things you saw in the picture offended those things?
A. Very much so.
Mr. Hartigan: That is all.
Mr. Mikva: That is all.
(Witness excused.)
The Master: We will adjourn until ten o'clock on next Tuesday morning, October 11, 1955.

516 Chicago, Illinois,
Tuesday, October 11, 1955
Ten o'clock a. m.

The parties met pursuant to adjournment.

Present:
Mr. Mikva,
Mr. Hartigan.

* * * * *

518 And thereupon the following further proceedings were had herein:
The Master: This is off the record, Mr. Reporter.
(There occurred at this point an informal discussion, outside the record, which, at the direction of the Master, was not taken down by the reporter.)
Mr. Mikva: May we go on the record now?
The Master: Yes.

TIMOTHY JAMES O'CONNOR, a witness, called on behalf of the plaintiff, having been first duly sworn by the Master, was examined and testified as follows:

Direct Examination by Mr. Mikva.

Q. Would you state your full name, Commissioner?
A. Timothy James O'Connor.
Q. And where do you live, Mr. O'Connor?
519 A. 8052 South Troop Street, Chicago, Illinois.

Q. And what is your occupation, sir?
A. I am a police officer of the City of Chicago.
Q. And do you also hold the title of Police Commissioner—
A. I have—
Q. (Continuing): —of the City of Chicago?
A. (Continuing): —a temporary appointment as Commissioner of Police.
Q. And how long have you been in the position of Commissioner of Police?
A. Since the fifteenth day of November of 1950.
Q. Commissioner, among your duties, do you have the duty of censoring motion pictures in the City of Chicago?
A. I do.
Q. And pursuant to what authority is that, if you know?
A. The City Code.
Q. Are you referring to Chapter 155, Sections 1 through 7, of the Municipal Code?
A. I am quite sure you are quoting them correctly.
520 But I am not familiar with the code numbers, but I am confident you have stated the code as it is set up.
Q. All right.
Now, what are your duties given you under that code, sir?
A. The duties are to require the submission of all motion pictures which are prepared for exhibition in the city to the Commissioner of Police, or whoever he may delegate, to be viewed, and a permit issued providing the motion picture does not violate any section of the City Code.
There are prohibitory sections of the City Code which would require the Commissioner to refuse to issue a permit if such a picture were submitted.
Q. Now, do you actually perform the censorship operations described in the Code yourself?
A. It would be impossible for me to perform the censorship operations in each and every case.
The power to issue permits has been delegated by executive order to a subordinate officer, who is in charge
521 of the censor bureau.
Q. And who is that subordinate officer?
A. Lt. Ignatius Sheehan.
Q. And is it your understanding, Commissioner, that he is the delegatee of the power that was vested in you

by the Code, is that correct? In other words, he exercises the power on your behalf as your delegate?

A. That is correct. Up to a point he has the power to issue these permits. But if there is any misunderstanding, of course, then the Commissioner of Police has the power to overrule both Lt. Sheehan and the censor board.

Q. Now, you mentioned the censor board. What functions does the censor board serve in connection with the Code we have been referring to?

A. The censor board views the pictures to ascertain whether or not they conform to the City Code. In any instance wherever they fail to conform, the censor board makes a recommendation to the commanding officer of
522 the censor bureau, either for cuts, deletions in the picture itself, or issue an adult permit or a general permit, as the case may be.

Q. Or rejection?

A. Or total rejection. That is correct.

Q. Is it your understanding of Lt. Sheehan's functions, that he has been delegated the power of making recommendations for the censor board?

A. Lt. Sheehan is not bound by anything. However, he is the administrative officer, and unless he himself personally viewed the picture and unless there has been some matter brought to his attention for further investigation, he quite naturally would abide by the findings of the censor board. But in any instance where the question is raised, the final decision rests with the Commissioner of Police.

Q. Do you know how this censor board came into being? Is it provided for in the Code as far as you know?

A. In the City Code?

Q. Yes.

523 A. I am a little hazy on that. However, I do know that the censorship board originally was created by competitive civil service examination, which some years ago—I mean, many years ago—was set up. But since there has been no further examinations held, the board is appointed on a temporary basis by the Commissioner of Police.

Q. They are appointed by you?

A. Well, I don't think that I ever appointed any of the present members. However, I think one of the present members was appointed—by the Commissioner of Police,

whoever he may be, does appoint them on a temporary basis.

Q. Is it your understanding that all of the present members of the censorship board are temporary employees in that respect?

A. I believe that is correct.

Q. Do you know when the last exam was given, Commissioner?

A. It was before my time as commissioner.

Q. Do you have any knowledge as to what the ex-
524 amination, what subjects the examination dealt with?

Mr. Hartigan: I think we have gone pretty far afield, Mr. Mikva.

Mr. Mikva: If he knows.

The Master: Subject to the same objection as to relevancy.

Mr. Hartigan: They are making the record pretty large here, and it does not accomplish any purpose to go into questions of civil service examinations. They are temporary appointees, and they are performing the functions of the censor board. What difference does it make what the examinations were. The record would show what questions were asked and so on.

The Master: In order to save time, since counsel is leaving this afternoon, and we want to expedite the examination of the Commissioner because he has a lot of things to do, shall we reserve argument on that along with the other matters to which you have objected?

Mr. Hartigan: All right, sir.

The Master: Let it be admitted subject to your objection.

525 The Witness: Repeat that question, please.

Mr. Mikva: Would you repeat that question, please?

(The reporter read the pending question to the witness.)

By the Witness:

A. As I stated before, the examination was held sometime prior to my appointment to the position of Commissioner, consequently I am not familiar with the examination.

By Mr. Mikva:

Q. Now, Commissioner, as between you and Lt. Sheehan and the censor board, who does the actual censoring of most of the films in the City of Chicago?

A. The actual censoring, the viewing is done by the censor board.

Q. And to your knowledge, do either Lt. Sheehan or yourself, in the majority of cases, have any supervisory functions in connection with the censor board's recommendations as to whether a film should be given an
526 adult only, a general rejection, or that certain parts be deleted?

A. Well, certainly, Lt. Sheehan has full authority under me to rule on the permit that is to be issued or the rejection. And, as I previously stated, I have that authority under the City Code.

The normal procedure is on submission of the film, on viewing of the film, by the censor group, their recommendation, and, it is more or less a routine matter, the issuance of a permit, because by far the greatest majority of the moving pictures viewed get a regular permit.

It is only where there is questions raised that require any supervisory acts on the part of Lt. Sheehan or myself.

Q. Now, you don't see many of the films that are presented for viewing?

A. That is correct.

Q. To your knowledge, does Lt. Sheehan see many of the films that are presented for viewing?

527 A. Well, I don't think that I can answer that because his office is right directly by the projection room, and it is entirely possible that he may see them.

Q. Is it part of his function, or have you ever required him or directed him to make it a point to see all the motion pictures that are presented?

A. All the motion pictures?

Q. Or the large majority of the motion pictures.

A. Well, it certainly is a part of the supervisory officer's duties to see that those members who are performing the actual viewing are there, and that they are doing their duty as they should do it.

So I take it for granted that Lt. Sheehan certainly does sit in on some of this censorship. But how much, I couldn't say.

Q. Have you ever instructed him specifically as to how he should proceed or participate in the actual censoring of films?

A. I have instructed him at times to view certain films.

528 Q. You mean specific films?

A. Yes. But as to how much he was to view, I don't think it is necessary for me to give him any such instructions.

Q. Now, you stated that you appointed one of the officers—one of the present censors?

A. Yes, I am quite sure that one was appointed during my tenure of office.

Q. What instructions—

Mr. Mikva: Strike that.

By Mr. Mikva:

Q. Are these members of the censor board employees of the Police Department, is that correct?

A. Yes, sir.

Q. And they are under your jurisdiction in that respect?

A. Yes, sir.

Q. Now, what instructions were given—did you give this censor when you appointed him as to the functions he was to fulfill?

A. Well, the instructions given to all members are that they are to be familiar with all the laws and ordinances
529 governing the censorship of motion pictures, and in their deliberations to use good common sense in findings as to the scenes used by them, and the application of the ordinances governing the particular scenes that they view.

Q. Have you ever—you are familiar with the fact that the Municipal Code authorizes, where there are obscene and immoral pictures, as to all the categories of films which you are obligated, under the Code, to refuse permits for, is that correct?

A. Yes, sir.

Q. Have you ever instructed the censors or Lt. Sheehan as to any definition of the words "obscene" or "immoral"?

A. I am confident we have gone into that several times.

Q. Do you recall any such instance, Commissioner?

A. The last instance I believe was in the controversy regarding a picture called A Miracle. I can't tell you the exact time.

Q. How did you instruct Lt. Sheehan and the
530 censorship board to apply these words "obscene" and "immoral"?

A. It wasn't a question of instruction. It was a discussion of definition.

Q. I see.

And what definition was finally agreed upon, if you recall?

A. The definition of what?

Q. Of the word "obscene."

A. The word "obscene" is a word meaning dirty, filthy, disgusting, and by common usage it is closely associated with the word "immoral."

Q. And how was it agreed upon to define the word "immoral"?

A. The word "immoral" is contrary to morality, good character. It is a word used to indicate matters of sex.

Q. Matters of sex.

Does that mean all matters of sex?

A. Those matters of sex which are contrary to the moral code.

Q. Contrary to the moral code?

531 A. Yes, sir.

Q. And what do you mean by the "moral code," sir?

A. The commonly accepted code by which normal human beings associate with each other in their daily life.

Q. Is that necessarily limited to normal human beings in the City of Chicago?

A. No. The moral code, as I understand it, is worldwide.

Q. Worldwide.

So that what people of other countries determine to be the accepted common code would have some influence in deciding what the moral code is in this country, is that correct?

A. I think the moral code is standard. I think it is a matter which has been for ages accepted by humanity as a way of living, and I believe there are people in other countries that don't adhere to it, the same as there are people in this country that don't adhere to any code today.

Q. In other words, the majority of the people of
532 other countries adhere to it the same way that the people in this country adhere to it?

A. I think the moral code is—that is something that is basic, and that regardless of anybody's opinion as to whether they think it is right or it is wrong.

Q. Now, you stated that you had this discussion with Lt. Sheehan. Did you also have it with the members of the censor board?

A. I am confident we did; as I stated, these matters are some years back, and I have had several other matters to attend. I am not as familiar with the exact discussion. I know we did discuss these things.

Q. Commissioner, if one of the members of the censor board were to state that the word "obscene" cannot be defined, would you say that she was in error?

A. No. I would say that she could be confused.

Q. Confused?

A. Yes.

Q. Commissioner, there are standards, are there,
533 that the members of the censor board are to apply in determining whether a movie should be rejected or accepted in the City of Chicago?

A. Well, if you would allow me to repeat the remainder of that ordinance, I think it says something about holding people up to derision or obloquy or scenes depicting depravity, criminality, the hanging or burning of a human being.

There are several other provisions there.

Q. Would you say that by and large during your experience as commissioner that the large majority of the pictures about which a question is raised involved the application of standards of obscenity and immorality?

A. Did the majority?

Q. Of those pictures which are brought into question. Do you mean the majority of the pictures that are presented?

A. No.

I think at times some of the pictures that are brought into question are those which can be or which can pro-
534 duce juvenile delinquency through depicting criminality. We have had them perform at times.

We have had other questions raised. I don't know whether you are asking me now about adult permit, cancellation, rejection, or you are talking about rejection.

Q. I am just talking about now primarily in the entire period.

A. On the question of adult permits, the question of horror pictures and pictures of that nature, and there are pictures that are entirely factual, but not of the type that apply to the general permit for persons of juvenile mind to see.

Q. When you say "juvenile mind," are you referring to physical age?

A. That's right.

Q. And what age are you referring to?

A. Well in the State of Illinois a boy is a juvenile until he has reached the age of seventeen, and a girl until she has reached the age of eighteen.

535 Q. Now, then would it be correct to say that an adults only permit—permits citizens of Chicago who are over age or more than over the age of seventeen and a female over the age of eighteen to see those motion pictures?

A. I think that is correct.

Q. It is not age twenty-one?

A. No.

The twenty-one is your voting age.

Q. So that if a picture, if we can by precise, if a picture is given an adults only permit, a boy of the age of seventeen is permitted to see that picture?

A. Well, you will have to pardon me. Now, it could be seventeen. It would put a specific age of twenty-one there. I am not absolutely certain on that point.

However, I do know that if a permit is very specific, it outlines those persons who will be permitted to view it.

Q. Let me ask you this:

In your view, Commissioner, is the delineation of
536 seventeen or eighteen that you have just been speaking about, a sensible one, that is one which does, in fact, delineate the difference between a juvenile mind and an adult mind in most cases?

A. Of course, the delineation was set up by the state legislature when the Juvenile Court of Cook County was created for the purposes of passing the necessary legislation relative to juvenile crime and adult crime, and I am sure that the legislators gave considerable thought before they set those ages.

I am familiar with other states that have other ages that they term people juveniles. But I think that is a pretty fair definition.

Q. Commissioner, referring again to this moral code, would you say that the English people—I am referring to the people who live in England—have a lower moral code than American people?

A. I have never been outside of the continental limits of the United States of America, and I am unfamiliar

with people other than American people. I have no
537 knowledge of the moral code of England.

Q. Would you state that the French people have a lower moral code?

A. My answer would have to be the same.

Q. Surely.

From your reading or your wide experience in public and civic affairs, have you ever run across anything which would indicate to you that either the French people or the English people have a lower moral code than the American people?

A. Well, my experience, as I stated, has been concerned with people in America, and only those French or English people who resided in America when I came in contact with them, and any of them that I have met have adhered to the moral code as we know it here.

Q. Now, Commissioner, in applying the words "immoral" and "obscene" as used in the Municipal Code of Chicago, are there any other elements which came into play in determining whether a picture is immoral or obscene aside from those that you have already mentioned?

A. Why, I believe that if a picture is shown
538 and the scenes depicted in the picture as well as the overall plot of the picture is something that would stimulate sexual desires of the normal human being, I think that could be a determining factor, could be a determining factor, as to whether or not it is, as to whether or not it is immoral——

Q. Or obscene?

A. Or obscene.

Q. Would it matter that the motion picture might be a work of art, whatever those words mean to you?

A. Well, I think you would have to explain to me what you mean by "a work of art."

Q. Suppose I used the words "artistic merits," would that be of any assistance?

A. The artistic merits of a picture would certainly be taken into consideration. But I feel for a picture to be immoral, the picture itself, the total picture, should be taken into consideration.

And if those portions of the picture depict some-
539 thing, as I stated before, that would arouse the sexual desires of a normal human being, and they outweigh

whatever artistic value they might have, the picture is immoral.

Q. Now, you referred to the way the artistic merits, and the tendency of a picture to arouse sexual passions. What would you consider the artistic merits of a picture in general?

A. Photography first, possibly the scenery, and then again it might have some historic background that could be considered artistic.

I will confess I am not much of an artist. I am a policeman.

Q. Commissioner, would the manner in which the film was acted out, that is, the dramatic performance in the film have anything to do with the artistic merits?

A. Well, of course, the matters of— the members of the stage consider their profession an art, and I can't quarrel with them.

Q. Do you agree, Commissioner?

A. Some of them are pretty good. The great
540 Sarah Bernhardt was one of the great artists of all time.

We had a man named John Wilkes Booth, who was an eminent artist in his chosen profession. But I don't know. Today there may be great artists of the stage and screen, but I can't quarrel with them.

Q. Do you think that is one of the elements of artistic merit, that is, dramatic performances that are given by the actors or actresses, who portray parts in a motion picture?

A. I think it could be.

Q. Do you think the manner in which the story is told is of a convincing nature, that is, the convincing nature with which the story is portrayed in a motion picture has something to do with the artistic merits of a motion picture?

A. Well, that is quite true: the manner in which the story is told could have some bearing on the artistic merits of the play or the picture.

However, that would depend on what the story was,
541 whether I would judge it to be artistic merit.

The artistry can be so far overshadowed by obscenity and immorality that in my opinion it could not have any artistic value.

Q. I see.

Now, does the fact that the story which is being told

is referred to as a classic, whatever that word means to you, have any effect in determining the artistic merits of a movie?

A. Not because it is referred to as a classic; that in itself would not. That could be a term used by a small promoter just simply to stir up interest in a particular picture.

Q. Suppose—well, now, how would you define a classic then, Commissioner?

A. Are you referring to books or motion pictures or what now?

Q. Do you think that the word differs in the various fields in which the term "classic" can be applied?

A. Well, I just want to be sure that I have your thought on the subject. That is the reason I asked the question.

542 Q. Well, suppose we refer to a classical story irrespective of whether it is portrayed in a motion picture or a play or a movie or a book or—

A. Or music.

Q. (continuing): —or music—a classical story. How would you define that?

A. In my opinion, a true classic, not a pseudo type is something that will forever. It is something fine, clean, decent; that is something that is accepted as a work of a master.

Q. Now, you said it has to be fine and clean and decent. Are those limiting words? Does that mean that anything, to your mind, that would be unclean could not qualify as a classic?

A. In my opinion, it could not qualify as a classic.

Q. Would you say that Shakespeare's plays were classics?

A. I haven't read Shakespeare. However, I have heard Shakespeare referred to as one of the masters and his

543 plays referred to as classics, but I cannot give a personal opinion.

Q. Commissioner, in your function as the chief executive officer of the censorship authority in Chicago, would you say that is a fair statement of your position— I am talking now solely about the censorship authority.

A. I think that is the way it is outlined in the City Code.

Q. Yes.

Would you say that the determination of whether a story is a classic or not is one for personal opinion, one for your personal opinion?

A. Well, I don't think that that is the way classics are determined. I think that classics are determined on the story, the music or whatever— or the play, and I think that it is usually determined by the opinion of many people.

Q. Then, in determining whether a story is a classic, and again we are using story in the generic sense to cover all types of portrayals, would you say that it is important to consult the opinions of other people?

544 A. Well, that is the reason we have a censor board, because of the advantage; it is getting the opinions of six or seven people before I ever make any determination.

Q. Would you say that if all six or seven of you agreed that a story was not a classic, that that would be a fair determination of the story, that the story was not a classic?

A. Well, I don't think that it is incumbent upon us to determine whether or not a story is a classic. I think we are only required to determine whether or not a story or a play or a picture does not conform to the City Code.

I don't think that the City Code makes any reference to classic or other types.

Q. Well, then, let me ask you this question again:

Do you think that the fact that a story is a classic has any effect or is an element in determining the artistic merits of value?

A. Yes, I will say again I do think so.

Q. Then, wouldn't you say that it is incumbent on you and the censorship board and Lt. Sheehan to deter-

545 mine whether or not a story is a classic?

A. I think it is incumbent upon us to take everything into consideration that we can in making a final determination.

Q. Well, do you think it would be a good idea, then, for you or the censorship board or Lt. Sheehan to determine as much information as they can about the movie in addition to what they actually see with their own eyes, to determine, for instance, whether the movie is a classic or not?

A. In practically every instance the censor board and Lt. Sheehan are furnished with advance information by the companies submitting the film, how, any film be it rated a classic or not, that can be information that is helpful, prior to viewing it.

Q. As you pointed out, Commissioner, the word "classic" might be used by a promoter, and that would certainly apply to a person who presented the film?

A. Yes, that's right.

Q. I am referring to people who might be con-
546 sidered authorities on what are classics and what are not classics. Do you think that those people or those people's views should be consulted?

A. Well, as I said before, I don't believe that it is necessary to simply determine whether or not a matter is a classic.

I repeat that it is not the part of the code; it is not incumbent upon us. It is helpful. It should be taken into consideration. But I don't think it is necessary for the censor board or Lt. Sheehan or myself to seek out authorities in every instance where a picture is submitted to ascertain whether or not it comes within the range of the term "classic."

Q. Commissioner, do you think that it is difficult or easy to determine the true artistic merits of a motion picture?

A. Well, if it is a truly artistic performance and conforms to my description of what I thought a classic was, I don't think that that should be too difficult.

547 Q. Commissioner, have you ever been in the position of attending either a movie or a play or an opera or any form of entertainment and finding that most of the people around saying that it is a very good piece of entertainment, and finding that you disagreed, and that you found something very beautiful and entertaining, and that they disagreed with you?

A. Well, I am confident that no two of us see through the same eyes; that there is a difference of opinion; and I have heard that at least that is one of the things that really makes the world go round.

Q. And do you agree with them?

A. I certainly do.

Q. Now, do you think that also the manner in which you determine the enjoyment or the artistic merits or anything you want to call it of a motion picture or a play or a book or a newspaper story or any form of communication is in part determined by your own background and the mood you are in at the particular time, and other
548 things that apply to you personally and to me or you apply to the majority of people in the City of Chicago?

A. Excepting that there are certain things in the part viewed, though, that would have a similar reaction.

Q. You are referring now to the artistic merits?

A. On artistic merits, I think that the people, the majority of the people, would react practically the same to whatever they see, excepting that some might have a difference of opinion, as you stated, such as personal background and what they might like and that sort of thing.

Q. They might have a lack of artistic appreciation.

A. Still they would recognize if it had artistic merit.

Q. Are you stating here—correct me if I am wrong, Commissioner—if a person can say to himself, it has no artistic merits to me, but I can see where it really has artistic merits—is that your suggestion?

549 A. Well, up to a point, that is correct, excepting that a person might well say, well, it has artistic merits which are destroyed by the obscenity and the vulgarity and immorality portrayed.

Q. Commissioner, you attend plays in the City of Chicago on occasion?

A. I am sorry, it is a long time since I have been to a play.

Q. Do you attend motion pictures?

A. Not since television.

Q. You watch movies on television and so on?

A. Prizefights mostly.

Q. Do you ever watch any movies or other forms of comedy hours or variety hours?

A. Yes, plays and so on.

Q. Would you say that your enjoyment and appraisal of the artistic merits of that particular play would be dependent, in part, on what kind of day you had downtown?

A. Well, I think that I can't agree. My days are usually pretty rugged; so they are all the same.

550 Q. Well, now, suppose you had a pretty—a particular rugged day. Don't you think that that would affect your appraisal of a particular play?

A. No. I think that I get a certain amount of relaxation from enjoying a play.

Q. Suppose you had a hard day and a lot of troubles, and then you came home and watched television which was chockful of other troubles, and it tended to depress you, would you say that that would not have an effect upon you?

A. I think I would turn it off.

Q. On that particular occasion you might say that the play did not have any artistic merits?

A. I would say that on that particular occasion it had no merits.

Q. And you might come home on another day when things have been going pretty well for the City of Chicago; you had been able to solve a lot of problems, and your wife fixes you the kind of meal that you might desire, then watching a play, you might say the play has
551 a lot of artistic merit?

A. Except that I am particular what I see on television. I don't permit crime to be shown in the home.

Q. I am talking about the effect of the play on you.

A. Yes. Well, I try to avoid horror, insane, and that sort of things, for the same reason.

Q. Now, Commissioner, you stated that a picture might have the effect of arousing sexual passions. Could you elaborate on that? Whose sexual passions, first of all?

A. The individual viewing it; a normal person viewing a particular picture.

Q. A normal person?

A. That's right.

Q. Now, the fact that it would arouse an abnormal person, say, a sex degenerate, would you say that that should or should not have any influence in determining whether that picture should be shown in the City of Chicago?

A. Of course, an abnormal person cannot be used as a simile or as an example, because I have no way of
552 knowing how an abnormal person would react to anything. I don't have no knowledge what sexual aspects might have an effect upon an abnormal person and not on a normal person, which he would not even recognize.

Q. So that if one of your censors stated that she would reject or cut out scenes which would influence an abnormal person, you would say that she was in error?

A. I would say that she is thinking of a normal person and stating what she thinks would affect a normal person; or she may be thinking of a scene which all of us would accept as the type of scene that would excite a person whose mind was not normal, either abnormal or subnormal.

Q. And you would agree with her that that type of scene should be cut out?

A. Well, I am confident that any scene that would excite all of us as the type that would excite a person that has a mental illness should not be shown.

Q. Even to people who do not have a mental
553 illness?

A. Well, if it has that type of scene that would have that adverse effect, I think that it would probably

have the same, not same, but have an effect on a normal person, too.

Q. Commissioner, in this testimony from this particular censor, we talked about the fact that a flagpole can serve to arouse the sexual passions of a normal person.

Now, it is my understanding that that is supported by psychological experts, who say that a flagpole is considered a phallic symbol.

Would you say that pictures depicting flagpoles should be cut out from motion pictures?

A. I am confident that that would be an exaggeration to state that a flagpole should not be shown because it has an adverse effect on a person of abnormal mentality.

However, you do have many other pictures, scenes, which would have an effect on persons of abnormal mentality,
554 and I am sure that should not be shown.

Q. Could you give an example of scenes of that kind that you are referring to?

A. Suggestive scenes involving sex.

Q. When you say "suggestive," what do you mean, Commissioner?

A. I mean the type of scenes involving people who would go through motions, exhibit portions of their body, in a manner very suggestive of sex and sex relationships, and things that would cause a person—

Well, of course, I am not familiar with the different forms of abnormality. But I am confident that there are plenty of scenes that, if we care to sit down and go over them, we could pick them out, and we would all agree that they would certainly arouse people of normal, abnormal or subnormal mentality.

It is impossible for me to just pick them out of thin air at this moment. I know that they do exist, and you know it, too.

Q. You would say that such scenes should not be shown in the City of Chicago?

555 A. Or anywhere?

Q. Or anywhere?

A. Yes.

Q. Let me ask you this, Commissioner. Even though some scene might have a great deal of artistic merit to someone of normal sexual balance?

A. Well, of course, I am confident that people of normal sexual balance, if there are scenes, which is agreed would affect people of mental irrationality, I think the normal

people would agree that they would just as soon not view such scenes. I think that would be best for the people of the city.

Q. That is your view that the people might, that it would not—

A. I am sure that they would accept that view.

Q. Commissioner, would you say that a painting of a nude can have a great deal of artistic merit?

A. Yes, I think it can.

Q. A nude female?

A. Under certain conditions, yes, and under
556 certain other conditions—

Q. No?

A. (continuing): —it could be obscene and immoral.

Q. Would you say that there are some classical paintings, some masterpieces, the subject matter of which is nude women?

A. Yes.

Q. Would you say that those pictures do or do not tend to arouse the sexual passions of the normal person?

A. I wouldn't know.

Q. Suppose they did, would you say that those pictures should be banned from public exhibition?

A. I think that they should be limited to private showings, to showings to people where they would not affect people, the abnormal people, as described.

Q. They should be banned?

A. As a matter of public safety because they excite the passions of abnormal persons and could lead to very serious crime.

Q. Commissioner, do you think that it is a
557 good idea to expose children to paintings of nude women?

A. By children, what ages would you take in?

Q. Say, from ten on up; from ten to seventeen.

A. Well, as I said before, it would depend on what the painting was about, the manner in which the nude was portrayed; and you would have to consider the overall facts of the picture before I could say it would be a good or a bad thing.

Q. Let me see if I can make sure of your position on this point.

Is it correct that you have stated that if the public exhibition of a nude woman, the painting of a nude woman, would tend to arouse the sexual passions of abnormal peo-

ple, then, irrespective of whatever other artistic merits the painting had that you believe such a picture should not be shown for public exhibition?

A. I believe it should be shown privately, yes, sir.

Q. And not shown publicly?

A. I didn't say that it should be banned, but it
558 should be shown only to a limited audience of people capable of viewing it without the effect that it would have on the abnormal mind.

But I repeat, and I want to make my position very clear—

Q. Surely.

A. (continuing): —that before we make any determination about pictures or any other piece of artistry, you have to have the total story, not just something or someone saying that it is a picture of a nude.

You would have to know what and how that nude was portrayed, the position, the manner.

It is not possible to render a positive opinion on a theoretical matter without giving the complete and total background.

Q. Well, let me ask you this, Commissioner:

There are people who apparently know most about abnormal sexual behavior and things that stimulate people of abnormal sex behavior. They are known as psychia-
trists or psychologists. Would you agree that our
559 doctors have studied that—

A. I am sure that they are best fitted.

Q. (continuing): —to determine these questions in terms of what does or what does not arouse an abnormal person or even a normal person for that matter?

A. That's right.

Q. All right. Now, if five leading psychiatrists and five of the best psychologists in Chicago were to make a tour of the Art Institute and would get the detailed facts which show that there are several pictures in the Art Institute of nude women and the poses of which and the positions of which would tend to arouse people of abnormal sexual behavior—would you say that those pictures should be removed?

A. No.

Q. You would not?

A. No.

Q. Would you care to elaborate on that answer, Commissioner?

A. I would call it to the attention of the authorities
560 operating the Art Institute and give them the information that the psychiatrists had given me, and ask them to take whatever action they could to limit the exhibition of those to people who they felt were competent to view them, without any adverse effects.

Q. That would, of course, simultaneously withdraw them from public exhibition and turn them into private exhibition?

A. No. Whatever manner they could.

Q. Would you say, Mr. Commissioner, if we can draw an analogy between what motion pictures could or could not be shown to the public, that it would be good idea to have on the censor board or some psychiatrists who could view as to what scenes might not arouse people of abnormal sexual behavior?

A. Well, I don't think it is necessary. I think that the present censor board does a very good job, and I think that as we previously went into the duties that they have to perform, as are outlined in the City Code, and again the scenes which might affect the abnormal behavior is rare.

561 I am confident that the motion picture industry does their best to eliminate that type of scene, at least in America they do.

Q. Well, now, Commissioner, suppose all five psychiatrists were to come into your office and say, "Commissioner, we have seen the picture The Game Of Love, and we find that there is nothing in that picture which would arouse the sexual passions of normal or even abnormal people," would that make any difference to you?

A. Would it make any difference to me in what way?

Q. In determining whether that picture should be banned in the City of Chicago.

A. Well, I know that no psychiatrist would ever come into the office and say that. I have found that picture is immoral and is the type of picture that does arouse the sexual desires of normal people.

Q. Of normal people?

A. I consider myself normal, yes, sir.

Q. If I were to tell you that four of the five
562 censors who testified here stated that it did not arouse their sexual passions, would you say that they are not normal?

A. No. I wouldn't know what they are with regard to that particular statement.

Q. If I were to state to you that it did not arouse the sexual passions of any of the people who reviewed the movie in other cities, would you say that they are abnormal?

A. I wouldn't know under what conditions the pictures were shown or who viewed them, and I wouldn't know the people.

I know that I saw it; I know that it is immoral, and I know that it did arouse my sexual passions.

Q. In what respect did it arouse your sexual passions, Commissioner?

Q. Well, in respect of the sexual passions that are aroused in any normal human being viewing that as I did. It instinctively aroused them.

Q. Did it influence you to go out and commit an immoral or an indecent act?

563 A. Certainly no.

Q. Did it influence you to act immoral or obscene toward any of the people around you?

A. No, sir.

Q. Did it have an effect of making you immoral or obscene?

A. No, sir.

Q. Then how did it arouse your sexual passions?

A. It simply aroused my sexual passion.

Q. But you didn't do anything about it?

A. No, sir.

Q. Did it create a desire in you to go out and want to do something?

A. To go and do what?

Q. To commit some sexual act or immoral act.

A. No, sir. I have got no desire to commit an immoral or obscene act.

Q. Did it create a desire in you to go out and commit any sort of sexual act?

A. No, sir.

The arousing of sexual desires doesn't actually mean to arouse to commit a crime.

Q. Well, the committing of a sexual act is not a 564 crime?

A. It is not a crime under certain circumstances, that is, if you are married.

Q. That is correct.

Now, it did not arouse your sexual passions to the extent that you desired to go out and commit any sort of sexual act, legal or illegal?

A. No, that is not correct. It did arouse my sexual desire to a point so that at that particular time I would have liked to have been in the company of my wife.

Q. Now, do you think that there is anything immoral or obscene about that, arousing that desire in you?

A. I think that it is immoral and obscene for a picture to do that, yes. The scenes depicting that is immoral.

Q. Now, there are other things that aroused your desire in that picture that made you wish you were in the company of your wife, aren't there?

A. Yes, sir.

565 Q. What are some of those other things?

A. Human nature.

Q. What do you mean by that, Commissioner?

A. I mean the nature that is instilled in all of us when God created us and gave us the desire for the reproduction of the human race.

Q. Is there anything normal or abnormal about that?

A. That is a natural thing.

Q. Similarly, if a picture were to arouse a desire to commit a natural act, that would not be obscene or immoral?

A. The picture would be. The picture should not be of the type that would arouse the sexual desires in the human being.

Q. Even though your natural desires that were aroused were those of committing a natural act, the one that you have just referred to—perpetuating the human race?

A. I will repeat only to make myself clear:

I would like to state that any kind of picture that does arouse the sexual desires of the normal human being is immoral.

566 Q. I want to point out, Commissioner, that these are difficult questions. I will appreciate your candor in answering them, sir.

If the only desire is to commit a natural act, such as you have referred to, being in the company of your wife, it would be a desire to commit some other natural act, that is, to perpetuate the human race. Would you say that the arousing of that desire is immoral or obscene?

A. The natural act of desiring to reproduce the human

race in every normal human being, he has that within him, and comes to us naturally.

The stimulous, such as a motion picture, which arouses that desire, is immoral.

Q. Now, does that mean that any form of stimulous is immoral or obscene?

A. The word "any" certainly encompasses an awful lot of things. You would have to pinpoint them for me.

Q. Let me give you some examples. Have you ever read a book that aroused your sexual desires? Would
567 that be immoral?

A. Yes.

Q. Have you read a newspaper that arouses that desire and is that immoral?

A. Well, not our newspapers; they never do that.

Q. Well, suppose a newspaper has a very lurid account—

Mr. Mikva: Strike it.

By Mr. Mikva:

Q. Suppose a newspaper has a very touchy portrayal of a person who has brought eight or nine or ten children into this world, and the hard time he has supporting his family. Couldn't that arouse you to commit some natural act?

A. No. I think it would arouse sympathy on my part.

Q. Couldn't it also be a stimulous to emulate this person?

A. No. I am confident—in fact, I know—that the newspapers lean over backward before they write an account that is considered immoral or obscene.

568 Well, I am referring to immoral in the sense that it is referring to pictures in newspapers and matters of that sort, which would arouse a sexual desire in the normal human being.

And I repeat, the newspapers as represented by the editors and the staff, I am confident, make thoroughly sure that nothing gets into the press that would be of that type.

Q. If anything did get into the press of that type, do you think that it should not be published?

A. I am confident that the press would make certain that it was eliminated.

Q. And, surely, what about the lurid account of a rape, giving all the details that abound in sexual acts?

A. That is never printed in a newspaper.

Q. It isn't?

A. No, not in newspapers.

Q. Are you referring to the names?

A. I am referring to the act of rape. They don't go into the actual description of the rape. I never seen that.

569 Q. Supposing that they refer to the crumpling of the body, and they tore off the bra, forced her down in the car and had intercourse?

A. I never read a lurid account such as that. I think the newspapers present the news fairly; give all the news in a manner that does not stimulate any sexual arousal on the part of anybody.

Q. Do you look at the entertainment pages of the newspapers, Commissioner?

A. Yes, sir.

Q. Do you see the advertisements for movies?

A. Yes, sir.

Q. Do you see those advertisements containing pictures of women whose bosoms are partially exposed?

A. Well, I have never seen anything in the newspapers that showed any woman exposed, partially, or otherwise, in a manner that would stimulate sexual desire.

Q. You haven't?

A. No, sir.

570 Q. Do you look at magazines; read magazines, Commissioner?

A. Occasionally.

Q. What magazines do you read, Commissioner, occasionally?

A. Well, I am not a very avid reader of anything, but I do read occasionally some magazine that I pick up at the newsstand, something like Collier's or Saturday Evening Post, something of that sort.

Q. Do you ever read anything or see pictures that would tend to arouse people sexually?

A. Not in that particular type of magazine, but we do have magazines that show such pictures, and we do make arrests and charge the individual with selling obscene material.

Q. If there were pictures seventeen feet high of a very voluptuous Hollywood star, with her skirt up, would that be sexually stimulating, do you think?

A. Not in itself. There has to be other matters.

571 Q. I see. Can going outside on a beautiful sunny morning, say, an autumn morning like this and hearing and seeing nature in all its loveliness, can that arouse the desire to commit a natural sexual act?

A. Do you mean stimulate going outside your house out into the street?

Q. Yes.

A. No, I don't think so.

Q. You don't think so.

If it did, would that be immoral or obscene?

A. If it is stimulating your walking outside?

Q. Yes.

A. Your own passions arouse within you?

Q. That's right, yes.

A. I am quite sure your going outside had nothing to do with any of the arousing of your passions. It would be a natural thing of your own body.

Q. All right.

Now, suppose you see a woman going down the street in a very tight sweater, could that arouse the sexual
572 passion to commit a natural act?

A. Well, under certain conditions women do dress, in my opinion, in an immoral manner.

Q. And would you say the woman who wore a tight sweater and dress would be dressed immorally or obscene?

A. Not necessarily.

Q. Well, suppose she had a large bosom, would that do it?

A. Not necessarily, no.

Q. If she wore a tight sweater and a tight skirt?

A. No, it would have to be more than that.

Q. Well, now, if I were to tell you that this woman who wore the tight sweater and the tight skirt, did they arouse your desire to commit a natural act? Would the way she dressed be immoral or obscene?

A. The way she dressed, in my opinion, couldn't be the total question of immorality or obscenity. There would have to be other factors.

Q. So that there would be other factors to arouse you to commit that sexual act?

573 A. That is one of the factors of immorality and obscenity.

Q. Is that an evil effect, Commissioner?

A. Is it an evil effect to arouse the sexual desires?

Q. To commit natural acts?

A. Yes, it would.
Q. Natural legal acts?
A. Yes, it is.
Q. And that is evil?
A. It is evil for the portrayal of a play to do that sort of things. Those things should come naturally. They should not be stimulated from without by any plays or books or pamphlets or pornography or obscenity of any kind.
Q. Or any form of stimulation of any kind, is that correct, such as—
A. I am confident that there is no stimulation necessary for nature. Nature takes care of itself.
Q. Now, is that what you mean by obscene, Commissioner?
A. What is that?
574 Q. That is something which tends to arouse sexual passions to commit a natural act, that is, a stimulation which tends to arouse passions to commit a natural sexual act. Would that be considered obscene by you?
A. Anything which arouses the sexual passions of a normal human being can be considered immoral when all the factors are shown or known in the entire picture.
Q. Now, if a picture does not have the effect of arousing sexual passions, could it still be obscene?
A. It could be filthy; it could be disgusting.
Q. Could it be obscene.
The Master: At the reporter's request, let's take a short recess.

(A short recess was taken.)

By Mr. Mikva:

Q. Commissioner, if the censorship authorities of other cities viewed a particular film and found that it was not obscene and immoral and permitted the film to be shown and holding such exhibition and moving picture re-
575 viewers, who are experts in the field, themselves said that this had great artistic merit; that the photography was good; that the scenery was well done; that the dramatic performance was good, and the story was well told and so on; do you think that should have any influence on what the Chicago censorship board does in rejecting or passing on films?
A. No, sir, because, first of all, we have no way of knowing under what conditions the movie was censored in the

other cities, nor what violation they may have placed on it, according to the laws and ordinances existing there.

And the movie critics' appreciation of the artistic value of it might be entirely correct.

But, as I stated previously, whatever artistic value a picture might have could be very far overshadowed by the obscenity and the immorality in that same picture.

Therefore, my answer to that question should be
576 that it would not be taken into consideration.

Q. Commissioner, who would you say would be the best judge of the artistic value of a picture?

A. The person viewing it.

Q. Any person viewing it?

A. Any person viewing it can place a value on the artistic value of it.

Q. Would that artistic value necessarily be the real artistic valne?

A. I believe it could in a general way.

Q. What would you say as to a person who is an author of films or an artist or a person familiar with the works of art, would you say that he would be a better judge of the artistic merits of a painting than the average citizen?

A. I think so.

Q. Would you say that a person who views, who reads a good deal of books or who writes books or who has had a great deal of training in literature and writing would be a better judge of the artistic merits of a book?

577 A. Sure.

Q. Than the normal person?

A. Sure.

Q. Would that person who reviews movies and who knows a great deal about the technical aspects of the industry and of the problems of the parts of the plot, the producing of the movie, say, would he be a better judge of the artistic merits of a film than the normal citizen in Chicago?

A. I think so.

Q. Do you think that that kind of a person would be a better member of the censorship board than the present censor board in the City of Chicago?

A. I think the present censor board we have in Chicago views a great many more film than the critics. I think that they would be in the same category that the movie critics are that you have described.

The Master: A recess for about five seconds.

(A brief intermission.)

578 By Mr. Mikva:

Q. Commissioner, would you say that a movie, the plot of which was a description of a man who was living in biganiy, would you say that is an obscene or immoral plot?

A. I think that there would have to be more to that for me to determine whether it would be obscene or immoral.

Q. Well, suppose that the entire plot—whether this is true or not—just suppose that the entire plot dealt with his having two wives.

A. It could be if the entire plot, the picture of the present story in a manner that would stimulate the sexual desires of the normal human being.

Q. Now, does the entertainment value of a picture have any influence in deciding or have any effect in determining whether or not the picture should be shown in Chicago?

A. Well, the entertainment value of the picture is one of the factors that is taken into consideration, but it is in the same category as the artistic value, namely,
579 that if the obscenity and vulgarity far outranks the entertainment value or the artistic value, then the picture cannot be shown because of its being immoral or obscene.

Q. Commissioner, do you think that entertainment value and artistic value are synonymous, or do you think that they mean different things?

A. Well, I think that they are different.

Q. How would you describe entertainment value?

A. Comedy is entertainment. But I don't say that it necessarily would be artistic.

Q. Could a tragedy be entertaining?

A. To a degree, yes, so long as it does not get into horror.

Q. What about a tragedy in which a mother killed all of her sons? Would that be entertaining?

A. I can't see any entertainment value to that.

Q. Do you think it would be a horror?

A. Well, I couldn't see it in any other way.

Q. You don't think that a picture like that or a play like that should be shown in the City of Chicago?

580 A. Just as you describe it, a woman killing all of her children, I say no, that it should not be shown in the City of Chicago.

Q. Even if it were commonly acknowledged as a classic?

A. Even though what was commonly acknowledged as a classic?

Q. Even though that play were commonly acknowledged as a classic.

A. Of course, you haven't given me the full story; you have simply made a statement that a woman killed all of her children.

Q. But that is the plot of the play.

A. There would have to be more to it than that. There would have to be other factors in the play, which would take it out of the category of the horror scenes.

Q. Suppose we took a plot. And now again I am just giving you plots which are the theme in which the son, who was destined to kill his father and sleep with his mother—would you say that that plot had artistic merit?

A. As you describe it, I would say it does not.

581 Of course, I am familiar with the plot that you have in mind. It may have other factors that I don't know about.

Q. You have—have you ever heard of Oedipus Rex?

A. No.

Q. A Greek play?

A. No.

Mr. Hartigan: What was the name of it.

Mr. Mikva: Oedipus Rex.

By the Witness:

A. (continuing): —No. I never heard of that.

By Mr. Mikva:

Q. Have you ever heard of Medea?

A. Yes. Do you mean the goddess Medea? Yes.

Q. Have you ever heard of the play Medea?

A. No.

Q. Commissioner, let us return to the subject that I think we talked about to some extent.

If you had a motion picture which did not arouse the sexual passions of any of the persons on the censorship board or Lt. Sheehan or you, but which the seven of you agreed would arouse the sexual passions of some ab-

582 normal person, would that picture be banned within the code?

A. I would have to see the picture before I could answer that.

Q. I am not referring to any special picture now.

A. Well, I would have to see the total pictures. I don't ban pictures arbitrarily. I have got to get the entire story before I would reject a picture.

Q. I was merely trying to go over again some of the testimony that I think you gave earlier in reference to whose sexual passions are being aroused. You remember we discussed the point?

A. My definition of "immorality," I was referring to normal people.

Q. So that even though something by common agreement aroused the sexual passions of an abnormal person you would not ban that picture?

A. Such as a flagpole, I would not ban.

Q. Suppose it was something a little less farfetched, such as a woman appearing in her slip. Now, that might arouse within the circumstances of the play or that
583 might not arouse the passions of any normal person?

A. Before I could give an answer to that I would have to know what would arouse the passions of an abnormal person. I consider myself normal. I am not in a position to say what does arouse the passions of an abnormal person. I have handled many abnormal people, and I have seen things that arouse their passions. I know that they are different with the individual.

Q. Now, Commissioner, turning to The Game of Love, which is the motion picture in question here. What did you find that was immoral and obscene in that picture?

A. Well, I would say the entire overall picture and story and the scenes.

Q. The scenes?

A. That is shown, yes, scenes.

Q. Would you say that the first scene in which it depicts a boy who has almost drowned, and then runs up on the beach; would you say that was immoral?

A. Obscene, yes.

584 Q. Did you see any of his private parts?

A. Yes, I had. It is exposed when he fell down on the beach.

Q. You did?

A. Why, yes, you could just see them; when he was lying with his face down you can't see his entire organ, but you could see his testicles.

Q. Would it matter if his testicles did not show?

A. The whole portrayal of the naked boy under these circumstances is immoral.

Q. So that if I were to say that the motion picture which my client proposes to offer in evidence in the City of Chicago does not exhibit the testicles of this young boy, would that make a difference?

A. If it did exhibit the testicles, it would make a difference. If it didn't, it would be one of the factors removed. However, it would not be the total story regardless with regard to this picture.

Q. Mr. Commissioner, is it possible to see a picture of the boy, and one person could see the testicles, and
585 the other could not? Would you say that is possible?

A. Yes, because you can only see one part of the scene of the picture. Your eye roves over the scene. You may be looking at the feet. This was only for a fleeting instance.

Q. Is it sometimes possible to see something that does not exist?

A. Is it sometimes possible to see something that does not exist?

Q. When you are looking at a motion picture?

A. Not that I know of.

Q. In other words, you think that if you saw his testicles in the picture that they would have to actually be shown; that it could not be a figment of the imagination or some physical quirk or mental quirk that would cause you to see his testicles when, in fact, they were not there?

A. I am confident I saw them. No mental quirk or figment of the imagination, because there were three of us there; we all remarked that we did see it at the time.

586 Q. Now, if the censors stated that they did not see his testicles, would that affect your testimony in whether to ban that picture or not?

A. No, sir.

Q. Did you find the plot obscene?

A. To a degree, yes.

Q. Could you elaborate on that?

A. Yes, because it showed the development of an adolescent entering adult manhood and sexual relationships with an adult person and with other immature persons, and, in my opinion, that is obscene and immoral.

Q. And do you think that is normal or abnormal?

A. Do I think it is normal?

Q. Yes.

A. I think it is wrong.

Q. Do you think it is normal?

A. It is normal for a person to seek sexual relationships. I think it is not normal for a mature woman to seek sexual relationships with a sixteen-year-old boy.

Q. Do you think that a normal woman could have that desire?

587 A. A normal?

Q. Yes.

A. No, not a normal.

Q. You don't think that a normal person could seek sexual relationships with a sixteen-year-old boy?

A. I think that such a woman would have a very serious abnormality. A normal woman seeks relationships within her own years.

Q. Do you understand, Commissioner, I am saying that this woman, this theoretical woman we are talking about; I am not saying that she does anything about those desires. I am just simply saying, do you think that a woman of forty years of age could have such a desire?

A. In the picture she did something about it. That is what I am talking about.

Q. Do you think it is abnormal for a woman of forty years to have the desire?

A. Well, I am not a woman; I really can't tell you how they feel about it.

Q. Do you think that it is abnormal for a boy sixteen or whatever age he was, to seek relationships with an

588 older woman?

A. No.

I think the man is constituted a little differently than the female, and I don't think it is entirely abnormal. I would say that it is irregular.

Q. Irregular?

A. Irregular.

Q. By that you mean what?

A. Well, I don't think that boys of seventeen usually marry women of thirty, although it has happened.

Q. Did he marry her in the picture?

A. No. We are talking about sex relationship, proper sex relationship in the proper relations; but improper, of course, adds to the immorality.

Q. Commissioner, have you ever read the Kinsey Report?

A. No, sir.

Q. Do you know what it is?

A. Yes, sir.

Q. Are you aware of the findings that Mr. Kinsey, Professor Kinsey, came up with?

589 A. Frankly, I am not.

Q. Was it abnormal for the boy to seek relationships with the young girl Vinca?

A. It is not abnormal, but it is definitely wrong.

Q. Commissioner, do you think that this conflict within the adolescent of sixteen or seventeen and similarly within the girl adolescent of fifteen is a normal thing—a conflict now—the dies to do certain things, the restraint against doing them, the feelings about doing them or about not doing them, the confusion as it were? Do you think that that is normal?

A. I believe that children at particularly an age when they are developing from a child to an adult do go through a variety of conflicts.

I do think, to, that with good home training, the inculcation of religious principles, they do, the vast majority, adhere to the moral code as we know it.

Q. Now, Commissioner, would you say that the

590 conduct, such as was portrayed in the motion picture does not occur—

A. It does not occur?

Q. (continuing): —in real life?

A. We have criminality and juvenile delinquency in real life, and very definitely that was true in this picture.

Q. Do you think then that the picture was realistic?

A. No, not in its entirety. We can agree if we go over the history of humankind from time immemorial, you could doubtless reproduce some matters that was true in the picture, but I don't think it is a daily happening.

Q. Commissioner, what percentage of the boys would you say have intercourse before they are eighteen years old?

A. Well, now, I wouldn't have any way of knowing that.

Q. Would you think it was a pretty large percentage?

A. Again, I haven't any thoughts on that subject.

Q. Well, just judging by the friends you had

591 when you were a youth and the people you knew when you were that age, the people that you were in contact with since, would you say that it was a large percentage or a small percentage?

A. The majority of the men who were boys with me were men I am proud to say of good character, and I am confi-

dent that very few, if any, indulged in sex relationships before marriage.

Q. Of any kind?

A. Of any kind that I ever knew of.

Q. How about petting?

A. How about what?

Q. Petting.

A. In my day they did not pet.

Q. I see.

Do you know what the word means?

A. Oh, sure.

Q. And in your day they did not?

A. No. We used to have supervision at our parties. When I was a youngster the adults would stay there and conduct you to any parties. However, in those days, the same as today, the youngsters did sneak off and
592 go through what you call petting. It did occur, but it didn't occur as promiscuously as now. We had supervision.

Q. Most of those people who did engage in that kind of conduct grew up to be normal?

A. I don't believe that the acts of petting in itself leads to sex relationship. I believe that is a normal thing on the part of most youngsters.

Q. Now, Commissioner, if a movie portrays historical facts, does that put it in a different class than if it is merely a piece of fiction?

A. How do you mean a different class?

Q. Well, are the standards somehow differently applied to such a picture?

A. The standards as to criminality, obscenity?

Q. Yes.

A. No.

A movie that has historical fact could still be immoral and obscene.

Q. So that if a newspaper printed a story, say, of
593 Roger (The Terrible) Tuohy, and then a movie company made a motion picture of that story, which was according to historical fact, would you say that that picture should be banned?

A. The picture was not banned. The moving picture company was sued by Roger Tuohy, but the picture was not banned.

Q. Didn't that portray criminality?

A. Well, to a degree it did, but I think that if you will

read that ordinance, the portrayal of criminality and depravity is in certain groups, isn't it?

And also criminality that was portrayed there was simply a stated matter of fact.

Q. If I told you that the ordinance said "• • • or portrays criminality. • • •"

A. Well, it does say it; I know that. But the portrayal of criminality, anything could be considered as portrayal of criminality. We have got to have the entire story before you know whether the public should be, or rather, the picture should be banned.

Q. So that, in other words, then, if the moving
594 picture portrays criminality, that still does not make it subject to banning?

A. It could be subject to banning when you have the total picture.

Q. But I say that it doesn't necessarily subject to banning merely because it portrays criminality?

A. Yes, it definitely does portray criminality in the scenes. The way it is written in the ordinance you have to have the total picture, and having the picture that was a portrayal of criminality to the point that a person looking at it, if it was a portrayal of some facts, which a person committed, that doesn't necessarily mean the picture itself is portraying criminality.

Q. Well, when does a picture portray criminality?

A. When the entire picture is devoted to the portrayal of criminal acts.

Q. In other words, one criminal act after another?
595 A. That is devoted to the portrayal of criminality.

Q. But a newspaper could publish this story; in other words, take someone like Tuohy or Dillinger. After all, their life was a portrayal of criminality, isn't that correct?

A. Well, we have no law or no ordinance giving the Commissioner of Police or anyone else the right of censorhip over publications. The only censorship we have is of moving pictures.

Q. Do you think in your capacity as a guardian of the public safety of the City, which is your job, that such a law would be a good idea if it also included newspapers?

A. Do you want an answer?

Q. Yes.

A. No.

Q. You don't believe in censorship of newspapers or ideas?

A. No, I don't think so. I think the newspapers do an admirable job of portraying the news that it should do.

The only action we take against publications is
596 when they violate the law of pornography and obscenity.

Q. And what actions do you take then?

A. We arrest them.

Q. You arrest them?

A. Yes.

Q. But there is no pre-censorship of newspapers?

A. There is nothing which gives us any authority to censor anything but moving pictures.

Q. Is there any pre-censorship on books?

A. We have no power to censor anything but moving pictures.

Q. I wanted that to be clear in the record.

Would you return to the movie The Game of Love? If I were to suggest to you that The Game of Love were made from a book written by Madame Colette, that she supervised the production of the movie to make sure that it accurately portrayed the theme, the plot and the action of her book;

And if I were to further suggest to you that that book circulates in the Chicago Public Library, and that it may be drawn out by children as well as adults;

597 Would you say that that can have a detrimental effect on the public safety of the City of Chicago?

A. If the book depicted the entire story exactly as the picture does, certainly.

I repeat, I have no authority to censor books.

Q. But merely asking your opinion now, because you are closer in that subject of public safety, do you think it would be a good idea if there some authority to prevent those books from circulating publicly?

A. Well, the censorship of publications is a matter which would require considerable deliberation by any body—I mean a legislative body—which would set up such a law because of the American tradition of free speech.

And consequently I think that it is sufficient that we have censorship of motion pictures.

Q. Sure.

Commissioner, do you think that the motion picture is an expression of free speech?

598 A. To a degree.

Q. But different than newspapers or books?

A. In a way, yes, because it has a more factual portrayal of the particular story or plot.

Q. In other words, it is truer; you can visualize?

A. Well, it is much easier to understand, yes, and it could give, as I said before, a more factual portrayal.

The mere black-on-white print of a magazine or book might not have the impact on a juvenile mind that the visual seeing of the particular incident would have.

Q. So, in other words, it is a more effective form of communication?

A. It is recognized that visual aids in training and teaching are more effective than just simple study.

Q. Does the fact or would the fact that this movie The Game of Love is played in cities like Boston, the same movie that is seeking to be presented here, identically,
599 is played in cities like Boston, where the population is known to be staid and conservative in nature; and it has played in every other major city in the country, would that have any effect on your decision to ban this movie?

A. None whatever, because I would have to know, or I would have no way of knowing relative to the censor in Boston. I have no means of evaluating the censor group there. And we feel that we do the job in the City of Chicago as the citizens of this city have ordered us to do it in the City Code.

Q. Well, suppose I were to tell you that the standards are the same in those other cities—immorality, obscenity are banned—and the same words are used as are used in the City of Chicago ordinance, and that none of these cities banned this film; the film can be seen by citizens in any large city in the country.

A. Not to us. We do the job for the citizens of the
600 City of Chicago. We don't permit the censorship of Boston to do the job for us.

Q. Commissioner, you mentioned that the only time that a newspaper or book publisher is gone after is when he publishes something that violates the criminal law, and you arrest him, is that right?

A. That's right.

Q. You also have that power over movie operators, is that correct?

A. That's right.
Q. But you also have this pre-censorship over movies?
A. That's right.
Q. Now, one last question, Commissioner.
Mr. Hartigan: Are you sure?

By Mr. Mikva:

Q. Did you find The Game of Love entertaining?
A. I must confess I did not get any entertainment value out of it personally. I was a little bit disgusted with the portrayal of an adolescent youth in the manner that it was portrayed in this picture, and the overabundance of
601 sex that appeared throughout the picture.
Q. Would someone have to be abnormal to get entertainment value out of this picture?
A. Well, I wouldn't know. I can only tell you my own personal reaction to it.
Q. Would someone have to be abnormal to have his sexual passions aroused by this picture?
Mr. Hartigan: That is what happened.
Mr. Mikva: Thank you, Counsel.

By the Witness:

A. They would have to have some abnormality relative to the arousing of sexual desires, because a normal person present would have some objective then after—

By Mr. Mikva:

Q. A normal person would have been aroused by this picture?
A. Yes, sir.
Q. When you say "objective," you mean go out to do what?
A. No. Just somewhere.
602 Q. You mean a desire to go out and commit a natural act or an unnatural act?
A. The desire for a natural act of sex relationship.
Q. Would you say that someone would have to be abnormal to say that this picture had high artistic merits?
A. They would have to have a peculiar viewpoint to think that it had high artistic merits; that is, the picture in itself, the way it was portrayed.
Mr. Mikva: I have no further questions.

Cross-Examination by Mr. Hartigan.

Q. Commissioner, if you will permit me. You said that you were married and living with your family at the address you gave?

A. Yes, sir.

Q. What does your family consist of?

A. My wife and three children.

Q. Now, will you tell us, Commissioner, how you
603 happened to view this picture The Game of Love?

A. Yes.

Because there was a protest at the rejection, and before I would reject a picture completely I went down with Mr. Melaniphy to view it.

Q. And you viewed the picture?

A. Yes, sir.

Q. Now, from your viewing of the picture what was your opinion of it?

A. It is immoral and obscene.

Q. Well, did it tend to substantially arouse sexual desires?

A. It did with me.

Q. Well, would you say that it would with the normal average person?

A. Yes, sir.

Mr. Hartigan: That is all.

Mr. Mikva: I just have one question.

The Master: All right.

604 *Redirect Examination by Mr. Mikva.*

Q. Would you say that your censors are normal average persons?

A. Yes, I believe they are.

Mr. Mikva: That is all.

The Master: Off the record.

(There occurred at this point an informal discussion, outside the record, which, at the direction of the Master, was not taken down by the reporter.)

605 *Examination by The Master.*

Q. Commissioner O'Connor, I would like to have you help me to develop some facts in two or three years here: One, in the area of the difference between, say, for the time being, "pornography" and "immorality."

Now, do all pictures concerning which there is an application for a permit go before the censor board?

A. Yes, sir.

Q. Do they also have occasion to deal with pictures which actually portray the physical relationships involving the sex organs?

A. I take, Master, that you are referring to the film commonly called "stag film," the film that portrays homosexuality and sex relations between men and women—we call them; it is strictly a pornographic film.

Normally, the censor board does not view them.

606 When arrests are made, the officers usually are present in the audience where a stag is being shown, so that they can testify in court that a particular individual arrested actually showed that particular picture.

The films are then seized, retained for evidence.

If it is necessary that the films have to be shown before a court or even for the benefit of the court, that is arranged. But such films as that are never submitted for permit purposes.

The censor board is created for the purpose of determining whether or not a permit should be issued.

Q. I made that note as you were testifying. I am glad you brought that up. In other words, these pictures do not appear before the censor board because no one asks for a permit to show that kind of picture?

A. No.

It is a crime to even possess them, so they would never bring them in.

607 Q. Does the censor board ever have occasion to view a picture that portrays the physical functions in the pornographic area?

A. Well, I had occasion to view a picture myself on one occasion that was made for the benefit of a scientific group. All they wanted was to release it to a limited audience here, and naturally they had to have a permit for it.

The picture portrayed a large group of African males; it was made in the heart of Africa. It was a scientific picture. It would be all right to appear before, say, The Anthropological Society of Northwestern University or something of that sort, but not before the public.

It is a rare occasion that we go to issue a permit in that sort of case.

Q. Would it be correct to say that one of the standards

that are applied by the censors in the City of Chicago has to do with the physical portrayal of the sex organs?

A. That would be correct to a point, but I would say that it is very, very rare that they are ever called
608 upon to pass on that particular point.

The physical portrayal of sex organs would be in violation of the criminal law, excepting in the instance that I mentioned.

The censor board places their evaluation on the picture not because of a particular scene.

I might say that there are scenes in many pictures which the censor board considers objectionable, and they call it to the attention of the distributor, and the scenes are deleted, and they make the cuts that are ordered. Then we have three inspectors who go around to the various theatres to see that the cuts that were ordered are actually deleted from that particular picture.

But those cuts are matters that might come within the wording of the ordinance here. I mean matters that could actually be immoral or obscene.

609 But the picture of this type that we are now discussing, it is the picture itself, the entire picture, and the report that was given to me by the censor board was that there were no cuts that they could recommend; that the picture itself was entirely obscene and immoral and should be rejected, and I agreed with the censor board on that point.

Q. Now, Commissioner, at the other end, perhaps, of the scale, that is from this physical portrayal, do you see a difference in the standard applied for immorality from the standard applied for obscenity?

A. No. I think that the two words are almost synonymous in their meaning to most of us today. I realize that in a dictionary you will get two definitions, but the usage, common usage today among people, many people will use the word "obscene" when they actually mean immoral, and vice versa.

I think that when the ordinance was passed that the city fathers were actually passing an ordinance to ban
610 films which they felt were immoral. The obscene part is—well, as I say, the word itself is almost identical in everybody's mind today.

Q. Would you say that they are practically identical when used as standards by the censor authorities in Chicago?

A. That's right.

Q. And then supposing a picture dealt with a situation which did not arouse the sexual impulse, and it dealt with it in such a way that it did not involve the sexual impulse, but it dealt with situations, a story at least, that was immoral in the sense that most people in this country would say, somebody here is doing something that is wrong.

Would that be a basis for refusing a permit?

A. Yes, sir.

Q. Now, I would like to go to another area. I enjoy, Commissioner, discussing this without at great length, but counsel are in a hurry.

There is another area that I would like you enlighten
611 me. I have just now been talking about different types of things to which you apply standards.

Now I want to talk about the ordinances, and I am particularly interested in the situation of young people, putting it in a general way, against adults. I would like to find out what different instructions are in the minds of the censors or in the rules, if you don't know what is in their minds, or in the practices of the censor authorities with regard to the effect of a picture on young people as against its effect on adults, when you can ban young people from seeing it, and yet permit adults to see it. Could you help me develop that?

A. Yes, I will. We have a right to issue an adult permit rather than a general permit. We have that right under the Code, and we exercise that right in cases where the picture itself portrays sex that we feel would have a detrimental effect on the immatured mind of the adolescent.

Now, I gave the juvenile ages of seventeen and eighteen.

But counsel brought it to my mind: There is specified
612 a specific age of twenty-one for an adult and non-adult, that is, with regard to motion pictures.

However, the reasons we apply them are many. First of all, the moving pictures censor's group is a part of the ordinary crime prevention section of the police department. They are linked together very closely with the juvenile officers and with the policewomen section.

And in the prevention of crime it is felt that the portrayal of any motion picture of fifty-five minutes of crime and five minutes of solution would have a very detrimental effect on the undeveloped mind of the juvenile. It would not have any effect on the developed mind of the adult.

Now, as an example of what I am talking about: There is a picture playing in the City of Chicago called Phoenix City Story. This is an actual factual story. There is nothing in that picture that distorts or anything; in fact, they portray it as it actually happened. But it is shocking. It has a terrific effect on the viewer.

613 Now, an adult can view that picture, and we did issue an adult permit for it. But we feel very strongly that no child should see it. And since the age is set at twenty-one, then no one under twenty-one can see it in the City of Chicago.

Q. Commissioner, suppose with regard to this language under twenty-one, it were held to be the law, that since you can't exclude everyone and since you can exclude anyone under twenty-one, that you might also exclude only people under eighteen or nineteen, and permit those involved up to twenty-one. Would that change your answer?

A. Do you mean with regard to The Game of Love?

Q. Well, we will get to that in a minute. In a general way.

A. Would it change my answer with regard to what?

Q. How you would consider those pictures as to effect?

614 Do you understand my question, Commissioner?

A. I don't think that I do.

Q. Maybe we can get at it in a different way.

A. All right.

Q. With regard to The Game of Love, Commissioner, do you think it is more or less likely to stimulate the sexual desires in the young person, say, for example, a person between twelve and eighteen than it is to stimulate the sexual desires of the person over twenty-one, or a person of our general age, which is pretty much over forty?

A. I can say it would be a more stimulating effect on younger people.

Q. It does?

Would you also say, Commissioner, that with regard to the films generally, that sometimes one age group finds artistic merit in a picture and another age group does not?

A. Oh, I can say that the more mature people can make a better determination of the artistic merit than the youngster.

Q. Or if it is something having to do with modern

615 dances maybe the youngsters can?

A. That is correct.

Q. Now, with regard to The Game of Love, have you considered, Commissioner, whether older people might not see artistic merit in the picture which younger people could not?

A. I am confident that anyone viewing the picture would be—would be sure that the immorality and obscenity, whichever you wish to call it, in this picture overshadows any doubt in artistic value that it may have.

Q. Now, the next area, Commissioner, in which I would like to ask you a few questions has to do with developing a brief summary of the procedures applied when someone wants to get a permit to show a picture; that is, procedural questions, such as notice, an opportunity to be heard, et cetera, before the final decision is given: "You can't show this picture."

Now, could you help me without my asking you any questions?

A. Sure.

The film producer, which is the distributor, applies
616 for a permit. He pays the necessary fee.

Q. Where does he apply?

A. At Eleventh and State, at the censor board office.

Lt. Sheehan's duty is to arrange for the reception of the film and the showing of the film to the censor group. After the censor group submit their individual report, Lt. Sheehan normally should either issue a general or adult permit. But in the event of a rejection, he informs the film distributor that the film has been rejected.

Should the distributor wish to pursue this further—of course, he is told why it is rejected also—but should he desire to pursue it further, he will appeal to the commissioner of police, and the commissioner of police will then call on the commanding officer of the censor board, having the report outline all the details of the picture and the reasons for the rejection.

When that report is received by the commissioner
617 of police, he will give an answer to the distributor.

And then he in turn, if it is still rejected, and they wish to pursue it further, they appeal directly to the mayor. And then the mayor will ascertain as to whether or not the commissioner of police has acted properly or not.

And after the mayor, of course, if they are going to go any further, they will have to go to a court of law.

Q. Now, as I understand, or I might say, as I recall

the testimony of the members of the censor board, there are not a printed rules governing this procedure?

A. It is outlined in the Code.

Q. Aside from the ordinance?

A. No.

Q. There are not any?

A. No.

Q. There are not any rules governing this procedure?

A. Do you mean the procedure conducted by the censor board?

618 Q. That's right.

A. Or the procedure conducted by the distributor seeking a permit?

Q. Well, both. Start with the distributor seeking a permit and coming in and ending up with a rejection by the mayor. Is that covered by printed rules of procedure?

A. It is common knowledge. It is well-known by all the distributors how to proceed. Practically everyone of them somewhere along the line would make these appeals.

Q. But there are no printed rules whatever, something in pamphlet form?

A. Only in the City Code, as outlined there.

Q. Now, as a matter of fact, or as a matter of practice I should say, do the applicants have an opportunity to come in and argue their case, so to speak?

A. Well, yes, they come into my office to present their side of the case, and, in fact, that is the way it is usually done, although it can, as in this case, it can be done by letter.

619 Naturally, the commissioner can't quite give as much attention to a letter as if an individual who came in to make a statement or a verbal statement following whatever other information he might have.

It has always been the desire of the police department and certainly of the city administration not to act arbitrarily in any of these matters and to give them all the consideration that can be given. But there is no hearing of the type that we are conducting here now. It is sort of an informal hearing.

Q. Well, is the option to have this hearing up to them? Can any applicant request a personal hearing before you, Commissioner?

A. Well, it is guaranteed them by the City Code; it is right in there.

Q. I am talking about your practice.

A. Oh, yes. We have never denied a hearing to anyone.

The Master: That is all I have at this time.

620 Mr. Mikva: I have a few short questions that came out of your questioning, Master.

Further Redirect Examination by Mr. Mikva.

Q. Commissioner, did you find the dialogue unfit in this movie The Game of Love?

A. Well, of course, the dialogue was in French, and you had the subtitles printed in English, and there were objectionable matters there. I would not say that they were undoubtedly obscene. But taking them into consideration with the picture that was being depicted, they were certainly very objectionable.

Q. Commissioner, the fact that this picture was shown to the censors did not affect the crime rate in Chicago?

A. I am fairly confident that none of them committed a crime. They have not been arrested.

Q. I am pretty confident that they did not. The fact that the Master and I and most of the newspapermen
621 in this city saw the picture at a private showing, it did not affect the crime rate, to your knowledge, did it?

A. I am confident it didn't.

Q. They are a pretty good bunch?

Mr. Hartigan (indicating Mr. Fred Bird): He wasn't over there.

By the Witness:

A. O. K. That's the reason I looked at him.

By Mr. Mikva:

Q. Now, did you state that you did not find the picture particularly entertaining personally?

A. No, I didn't.

Q. And I would say that it might well be—at least it is your opinion probably that many of the people in Chicago would not find the picture entertaining?

A. I am confident of that.

Q. Do you know or are you familiar with the reference "art theatres"? They are theatres that normally show pictures that are not generally accepted by the movie-going public, as you understand, but they are confined to a small group?

622 A. Well, I know what you mean now.

Q. Commissioner, if this picture were shown at an art theatre, in the light of what you said as to its entertainment value, and in the light of the kind of people that go to such theatres, do you think that the crime rate would go up as a result of this picture being shown?

A. I wouldn't know that because after viewing the picture myself, I found it to be a picture that is in direct violation of that city ordinance, and I am sure the ordinance was passed with a view to preventing crime. But you can never tell how successful you are in preventing crime. But when you prevent crime that doesn't happen, it just doesn't happen. There are not any statistics, therefore I wouldn't know how much this would contribute to the crime rate.

Q. I am asking you so far as the picture in this case is concerned. Do you think if this picture were seen by adults who look on novels by Colette as classics, and
623 who look on classical literature as a more desirable form of entertainment, do you think that the viewing of this picture by such audiences would have any effect on the crime rate? I am asking your opinion as an expert in this field.

A. Well, I have no yardstick by which I could make a determination and give a direct answer. I can only say that there is a possibility that the picture and the stimulation of sexual desires might lead some person who was more or less unscrupulous to indulge in some form of sex that could be considered a crime.

But lacking any means of making a positive determination, I will have to say that there is no way that I can answer it.

Q. The fact that it might stimulate people to commit natural and lawful sex acts, such as having sex relationships with their wives or getting married so that they can have sexual relations, or having sexual relations with a view
624 toward reproducing—none of those certainly would have any influence on the crime rate?

A. Are you asking or making a statement?

Q. I am asking.

A. I am sure that they don't have any influence on the crime rate.

Q. And therefore in your capacity as police commissioner are you concerned with those actions?

A. I am concerned with a moving picture which will stimulate sexual desires and the natural sex desires of any

normal person, because, in my opinion such moving pictures should not be in existence.

The natural sexual desires should follow out the laws of nature and given me as God intended; that they come not through any stimulation provided for in a moving picture.

Q. So that, therefore, if the only effect of this picture were to stimulate a natural and lawful action, you still do not think that the picture should be shown in the City of Chicago?

625 A. As long as the picture, in my opinion, is immoral, and through its immorality it is stimulating the sexual desires of the normal people, I know it should not be shown because it is in violation of the City Code.

Q. Now, I repeat my question, Commissioner. Perhaps I will rephrase it.

If the effect of this picture is to stimulate artificially and stimulate people to commit natural sexual acts, which do not violate the law, do you think that the picture should still be banned?

A. Well, that is the only effect of this picture.

The picture, in addition to stimulating sexual desires of normal people, it is also obscene in the fact that it portrays the sexual desires of the adolescent and the relationships between the adolescent and the mature woman, and other features of this picture which, I am confident, should not be shown to the general public of the City of Chicago.

626 Q. Well, now, just the portrayal of the sexual desires of adolescence, could that be construed as obscene within your definition of the word?

A. The portrayal in the manner that it was portrayed here, it very definitely is immoral.

The reason for banning the picture is not one of the features that you outline but a combination of them all, in considering the picture from an overall viewpoint as immoral.

Q. This last part of your answer was apart from the effect that it may have on the sexual passions of normal people?

A. Well, wait just a minute.

Mr. Hartigan: Do you understand that?

You went a little over my head.

Mr. Mikva: I will be glad to rephrase it.

The Witness: Please.

By Mr. Mikva:

Q. In addition to the effect that you found in this film, that it tended to arouse sexual desires of normal people, you also told you found other elements, which you
627 believed made this picture immoral and obscene, is that correct?

A. Which I know make it immoral and obscene.

Q. Now, could you tell me what those elements are?

A. Certainly. The portrayal of a nude boy in front of a group of young girls, and the boy running through the streets naked, with a hat over his privates.

Q. May I stop you, Commissioner?

A. Sure.

Q. To make sure we are on the right track. That is apart from the factor that this scene might have aroused any sexual desires?

A. I can't make any apart findings. I am only considering the factor in what I saw.

Q. May be I can rephrase the question. It is a little difficult. Perhaps I am not exactly clear in what I am getting at.

We have already discussed the fact that you found this picture would arouse sexual desires in normal people?

A. Right.

628 Q. Now, are there other things, other characterizations you can make about the movie without regard to any particular scene which you feel, apart from this effect it will have on sexual passions, also make the movie obscene and immoral?

A. Yes.

Q. Aside from those?

A. Yes.

Q. Could you name those?

A. The fact that it portrays sex relationships between adolescents and juveniles, hurt it, this picture, which could lead to very serious trouble.

However, at one point, in some of the foreign countries they had to discontinue teaching sex hygiene because some of the children decided to try out what was being taught them.

And this particular picture gives youngsters ideas that, if carried out, could ruin the lives of the youngsters who had watched the picture. I think it is a very
629 dangerous thing to portray.

Q. Even though, and that is aside from the fact or

in addition to the fact, if you care to put it that way, in addition to the fact that it also aroused the sexual impulse?

A. Yes.

Q. Just what was that special effect that it may have on the young people?

A. I am confident that that particular portrayal would be on the minds of youngsters of similar age.

Q. And is that effect an element of immorality or obscenity as you applied those standards in your job?

A. That certainly is an element of portraying juvenile delinquency in its worst form, which might be called criminality, although we have not contended criminality here.

But it also is immoral to portray sex relationships between anybody outside the marriage band.

But certainly the portrayal of sex relationships be-
630 tween juveniles is an ever more serious matter.

Q. Let's see if I can pinpoint this. I am not trying to trap you.

A. You can try anything you want. It's all right with me.

Q. Is that meant with the portrayal of immorality aside from the effect that it might have on the sexual passions?

A. Yes, definitely. It is in violation of the immoral—moral code, as normal people understand the moral code.

Q. You also stated that any portrayal of sexual relations or any suggestion of marital relations outside the marriage relation is immoral?

The Master: Would you phrase that again?

Mr. Mikva: I will be glad to.

The Witness: I don't think it is quite clear.

By Mr. Mikva: Let me ask you this.

Q. I don't mean to put words in your mouth.

Is the portrayal of sexual relations outside the marriage relation immoral?

A. Do you mean between ordinary citizens of Am-
631 erica, or are you talking now about the portrayal made of life among savage tribes, or just how are we talking?

Q. Well, suppose we confine it to citizens of the world, not savage tribes.

A. For particular citizens to indulge in sex relationships outside of the marriage relationship is very definitely an immoral act.

Q. And therefore the portrayal of such an action in a

film would be the portrayal of an immoral act, is that right?

A. Up to a point, yes.

But on the other hand, a portrayal might be made in a manner that would not necessarily be immoral. It could become immoral, though, if it were portrayed in relationship to other portrayals in the same film.

In other words, you may have a film which is basically clean, but it would portray some act of that sort by itself, showing that the malfactor came to a bitter end, or something of that sort.

And then the film itself might be something that 632 would not be improper at all.

But in this particular portrayal the thing is designed or the scene is designed to portray scenes and sex relationships in a manner that is very definitely immoral.

Q. All right. Now, Commissioner, if that action, this portrayal of these acts outside the marriage relationship is immoral, is it your contention that such immorality—I mean, is it your position that such immorality must outweigh whatever other artistic features the film might have before the film is to be banned, when viewed as a whole?

A. My contention and my opinion, when I make my ruling on that matter, was and is that the immorality and obscenity, when it overawes the artistic and entertainment values of the film, that the film must be banned, and that was the case here.

Mr. Mikva: Thank you.

The Witness: Sure.

Mr. Hartigan: Just one question, and you will be on your way.

633 *Recross Examination by Mr. Hartigan.*

Q. In this film The Game of Love, Commissioner, when you were appealed on the censors' prior rejection, what did you do?

A. I called on Lt. Sheehan for a report.

Q. And then what happened after that?

A. I sent a copy of his report to whoever it was wrote the letter to me. I don't think anyone came in to see me. It was just a letter that was sent to me on this.

Q. Did you order a re-review of the picture?

A. By Lt. Sheehan?

Q. Yes.
A. Yes.
Q. And did you see that re-review yourself, Commissioner?
A. No, sir, no.
Q. Did you see the film subsequent to that time?
A. I saw the film later, sometime later. I don't recall exactly when.
634 Q. I see.
You concurred in the censors' rejection, did you?
A. I did.
Mr. Hartigan: All right. That is all.
The Master: Just one or two more, Commissioner.
The Witness: All right.

Further Examination by the Master.

Q. What I am going to try to develop here with your help, Commissioner, is a further difference in the reaction of different types of audiences.
You recall that counsel mentioned a couple of plays: I think that they were described as Oedipus Rex and Medea; one in which a son kills the father and marries his mother, and the other where the mother kills her son.
Now, if a person did not know very much about Greek classics, and I assume that these are Greek classics,
635 and will try to show that they are Greek classics, if they were to see these films, they might have a certain effect on them? You think not?
A. That's right.
Q. And there might be some sort of sexual stimulation involved here?
A. Yes, sir.
Q. But now, suppose people who were interested in lectures and they were interested in Greek classics, suppose they were older than eighteen, nineteen, twenty or twenty-one, and they went to see plays like these—could we concede that they might have a reaction which did not include sex stimulation?
A. I think we could, and I might add that such plays undoubtedly are shown in private, as in the sciences. But what we are talking about here is the issuance of a permit for showing to the public in the City of Chicago, and I don't know how you are going to differentiate between the public—I mean in the selection of your audience.

Q. Well, if the public generally were educated in
636 Greek classics.

A. That's a good idea. I am afraid we will never see that.

Q. I have recently seen two motion pictures; they are not on the record, and I suppose counsel can strike this line of questioning for that reason.

But I have recently seen the Seven Year Itch and the picture called Marty.

A. Marty.

Q. Have you seen both those pictures, Commissioner?

A. No.

Q. Well, then, we can't talk about that very much?

A. I don't know anything about them.

The Master: Well, that is all I have.

The Witness: Is that all?

Mr. Hartigan: That is all, Commissioner.

Mr. Mikva: Commissioner, let me thank you for your assistance and your candor.

The Witness: That is all right.

(The witness was excused.)

* * * * *

640 Mr. Hartigan: Yes.

Mr. Mikva: It is agreeable.

The Master: Now, this is off the record, Mr. Reporter, please.

(There occurred at this point an informal discussion, outside the record, which, at the direction of the Master, was not taken down by the reporter.)

Mr. Mikva: Mr. Reporter, will you please mark these clippings, Mr. Reporter, Plaintiff's Exhibits Nos. 16 to 30, inclusive, for identification.

(The documents referred to above were marked "Plaintiff's Exhibits Nos. 16 to 30, both inclusive, for identification, October 19, 1955.")

Mr. Mikva: May we go on the record?

641 The Master: Yes, Mr. Mikva.

Mr. Mikva: Master, I would like at this time to offer Plaintiff's Exhibits 16 through 30, which consist of reviews of the movie The Game of Love which have appeared in various newspapers throughout the country.

They also consist of announcements that appeared in the newspapers showing that the picture has played at various theaters throughout the country.

I would like to offer them into evidence at this time.

The Master: Do you want to show them to Mr. Hartigan?

Mr. Mikva: Yes. (Handing documents to Mr. Hartigan.)

I should like to state, if I may summarize, that these are all the reviews that were available to us. They include both favorable and unfavorable reviews. The majority of them we classify as favorable to the film, but there are some reviews in there which did not feel that the film was a particularly noteworthy effort.

642 The Master: Were these all clipped from newspapers?

Mr. Mikva: These were all clipped from newspapers of general circulation in the various cities and towns, as indicated on each of the exhibits.

They appeared on the dates that are indicated on the exhibits and, as you will note from the exhibits, most of them are from newspapers of national repute, and they are newspapers of general circulation in large towns in which this film played.

Mr. Hartigan: Does each clipping have with it the name of the paper in which it appeared?

Mr. Mikva: As to all reviews, yes.

Mr. White: The dates are on them, too.

The Master: This is off the record.

(There occurred at this point an informal discussion, outside the record, which at the direction of the Mas-
643 ter, was not taken down by the reporter.)

Mr. Mikva: Of my own knowledge, I would like to say that these reviews were clipped from the newspapers in which they were printed and appeared, and were pasted on the pages in which they appear, for convenience; that these are the identical reviews and have not been modified or obliterated in any form.

They all are the reviews that have appeared in the newspapers in which they state that they have appeared in, and similarly, the announcements showing where the film was playing, are similarly clipped from newspapers of general circulation.

The Master: When you say "announcements," do you mean the editorial announcements or the advertisements?

Mr. Mikva: Advertising announcements.

Mr. Hartigan: Well, are you also offering the advertising announcements?

644 Mr. Mikva: Solely for the purpose of showing that they played at the theaters that are indicated.

Mr. Hartigan: Well, it is in addition to the comments on the pictures?

Mr. Mikva: I have no interest in the comments that are made in the announcements; and I ask for the admission of those announcements solely as indicating the theaters that the movie has been playing at.

The Master: This is off the record for a moment, Mr. Reporter, please.

(There occurred at this point an informal discussion, outside the record, which, at the direction of the Master, was not taken down by the reporter.)

Mr. Hartigan: You are offering them then for the restricted purpose, or what?

645 Mr. Mikva: I am offering the announcements as distinguished from the reviews for the restricted purpose of indicating that the film did play at the theaters therein indicated, and that the advertisements did appear in the newspaper advertising the film.

But I am not offering it in evidence for the purpose of bringing before the Court the comments shown on those advertisements. Now, that is separate and distinct from the reviews.

The reviews I am offering in their entirety.

May we go off the record, Master?

The Master: Off the record.

(There occurred at this point an informal discussion, outside the record, which, at the direction of the Master, was not taken down by the reporter.)

646 Mr. Hartigan: Well, I object to the reviews on the ground that they are not relevant. They are comments of newspapers, comments outside of the City of Chicago, and there is no basis for the showing so far as the picture is concerned that it is an artistic showing.

I do not believe that it is relevant to the issues in this case.

The Master: Well, on that score, Mr. Hartigan, would you like to, and you, too, Mr. Mikva, to defer argument with regard to the relevancy of this exhibit or exhibits to the time when we argue the relevancy of considerable other testimony that was offered and to which Mr. Hartigan made objection?

Mr. Mikva: Yes.

The Master: Is that agreeable?

Mr. Mikva: That is agreeable.

The Master: Is that agreeable to you, too, Mr. Hartigan?

Mr. Hartigan: Yes, that is agreeable.

647 The Master: And I understand that you would like to attack their relevancy on the same grounds that you mentioned, namely, you made objections on the ground of relevancy even though you have not specifically stated that here?

Mr. Hartigan: Yes.

The Master: And what is your other ground?

Mr. Hartigan: The other ground is that we have not had any opportunity to cross-examine the authors of the various comments, or what do you call them?

Mr. Mikva: "Reviews."

Mr. Hartigan: Reviews.

So far as the announcements referred to by counsel, they are not the best evidence of the facts that they purport to show, that the picture was exhibited at the theaters referred to in the advertisements.

Mr. Mikva: Now, if the Master please, I will limit my argument solely to the hearsay point, which I think is the second objection made by Mr. Hartigan.

648 These reviews, and you will note in going through them that many of them are unsigned, are not being introduced to bring before the Court the opinion of any particular person.

They are similarly not introduced to bring before the Court the truth of what was said in those reviews.

The sole purpose for which they have been introduced is to show that this report, this review, appeared in a newspaper, and that this newspaper, irrespective of who the author was, presented this review to the public, to the reading public, in the city where it distributes its newspapers.

I will give as an example, the reviewer for the Daily News, whose name is Matinny—a pun on a word—and that review is written, for instance, by many different people; it may frequently be written by several people at the same time, for all we know.

The purpose is not to bring before the Court any particular reviewer's opinion, which is why I have included

649 adverse reviews, reviews in which the film has been "panned," if I may use that word.

The sole purpose is to show what the newspapers have

said about this film, irrespective of who said it in any particular case.

And the reason why they are relevant and not hearsay, because Judge Schaefer states that you must consider the artistic merits, and I think it is very clear that the artistic merits, and the classical content, which Judge Schaefer speaks about, and all the federal cases speak about, are a matter of public as distinguished from private opinion, and public opinion is in part, evidenced, and in part formed by these reviews as they appear.

The hearsay point, I suggest, cannot be well taken because there is nothing to cross-examine. Once it is admitted, as Mr. Hartigan has stipulated, that this did appear, then that is all there would be to cross-examine because all that could be asked in any cross-examination is:

650 "Did this appear?"

It does not matter whether it is true or not; it does not matter who wrote it.

All that matters is, did it appear?

If Mr. Hartigan has more adverse reviews that we have been unable to find that will balance those that we have put in, and that state that it is not a work of art or a classic, he is at liberty to introduce them.

I do represent to the Court that we have presented a complete sample, because we have taken every review that we can lay our hands on and brought them in.

The question of hearsay is not involved.

The truth of the matter contained therein is not involved.

The purpose of their being introduced is solely to show that it was said.

Who said it, and whether it is true or not, is irrelevant.

Mr. Hartigan: You introduced them, then, Mr. Mikva, for the purpose of showing by these reviews that this

651 is an expression of public opinion—

Mr. Mikva: That is correct.

Mr. Hartigan: (continuing) —as to art?

Mr. Mikva: That is correct.

Mr. Hartigan: As to the art merit that the picture may have?

Mr. Mikva: That is true.

I could also bring in fifty people or one hundred people or a thousand people and have them give their opinion that this was or was not a work of art.

Mr. Hartigan: But if you did, they would be subject to cross-examination?

Mr. Mikva: No, because all that I would be introducing them for your cross-examination would be limited to the fact that they said it, not whether it is true.

Mr. Hartigan: Well, you could ask them on what did they base their opinion.

Mr. Mikva: On the contrary. All I ask them is:

"Did you say this?"

652 Your cross-examination would be limited as to whether or not they said it. It is not a question of whether it is true or not. All that is involved is, was this said?

And that does not come within the purview of the hearsay rule.

If I may make an analogy: This situation where we are dealing almost exclusively with the question of public opinion, the question of how a work of art, of how a picture or a movie or a story is determined to be a work of art—and I respectfully submit that this, of course, goes to the weight with respect to any of the methods in which a picture is determined to be a work of art or not, is what the public says about it, whether it is true or not, and the newspapers indicate what the public says about it, and then, in a sense, they form what the public say about the picture.

The Master: I think that the latter is a matter of argument, Mr. Mikva.

Mr. Mikva: That is correct.

As I say, that goes to the weight.

653 Mr. Hartigan: You would have to pass upon it if I said not a word on that thing.

Mr. Mikva, as I understand it, says that this represents public opinion on the merits of this picture regardless of whether the movie, or that one of these comments is by John Jones or Dick Williams.

Mr. Mikva: That is right.

Mr. Hartigan: Dick Williams says this. We can't cross-examine Dick Williams because he is not here.

Mr. Mikva: But the question of who Dick Williams is has nothing to do with it.

Mr. Hartigan: Dick Williams is the writer for that newspaper, and he is a commentator, and therefore that is public opinion, and that is the thing that fixes the art merit.

The Master: That point troubles me as it does Mr. Hartigan, Mr. Mikva.

If you are merely trying to introduce these to show that they appeared in newspapers and not to show the truth of what they purport to say, to overrule the objection.

654 Mr. Hartigan: That it is hearsay.

The Master: This is off the record.

(There occurred at this point an informal discussion, outside the record, which, at the direction of the Master, was not taken down by the reporter.)

Mr. Mikva: I would like to go one step further at this point. They are similarly introduced to show that that was the opinion of the newspaper as distinguished from any particular person; that that was the opinion of the newspaper that printed this review; that it was represented to the public as the opinion of that newspaper, or whoever is responsible for what appears in a newspaper, that this was their view of the film.

Mr. Hartigan: Well, my objection there, Master—I haven't any objection to the proposition that that would be the opinion of that newspaper. It may be the opin-

655 ion of that newspaper, but the value of that opinion, of course, Mr. Mikva I think takes the position that he says nothing about the weight of that opinion.

The Master: That is right.

You are still reserving your objection to that part of it?

Mr. Hartigan: Yes.

The Master: But, as I understand it, there is no objection to Mr. Mikva introducing them for the purpose of showing that they are the opinion of that newspaper?

Mr. Hartigan: No.

The Master: From which they were clipped?

Mr. Hartigan: No, no. It might be the opinion of that newspaper.

Mr. Mikva: May we go off the record for a moment?

The Master: Off the record.

(There occurred at this point an informal discussion, outside the record, which, at the direction of the Mas-

656 ter, was not taken down by the reporter.)

The Master: So that with regard to these exhibits which are offered, the only question for me to rule upon, gentlemen, as I understand it, is the question of relevancy, whether these documents have any relevancy, or so little relevancy that they should not even be admitted; or if they are admitted, then what degree of weight should be given to them, is that correct?

Mr. Mikva: That is correct, Master.

The Master: Is that correct, Mr. Hartigan?

Mr. Hartigan: I think so, Master.

The Master: Then I assume that we can reserve the argument on relevancy as we have reserved the other arguments on relevancy, to be made and heard at one time; and, as I understand it, Mr. Hartigan, you reserved some specific grounds with regard to relevance with regard to the other evidence that has been admitted as subject, is that correct?

657 Mr. Hartigan: That is right, Master.

The Master: Then I will receive them subject to that objection.

(The documents referred to above, which have heretofore been marked "Plaintiff's Exhibits Nos. 16 to 30, both inclusive, for identification, October 19, 1955," were received in evidence marked Plaintiff's Exhibits Nos. 16 to 30, respectively, October 19, 1955.)

The Master: This is off the record, Mr. Reporter, please.

(There occurred at this point an informal discussion, outside the record, which, at the direction of the Master, was not taken down by the reporter.)

Mr. Mikva: Master, to protect my record in this 658 case, I should at this time like to offer again Plaintiff's Exhibits 1 through 30, inclusive, into evidence. I believe that they have all been offered previously, but just to make sure that they are all in, I offer them at this time.

Mr. Hartigan: The City renews its objections to said exhibits and moves to strike all of the evidence in the case except the film.

The Master: I will take your objections and motions to strike and permit you to argue them tomorrow morning at eleven o'clock.

(The documents referred to above, which have heretofore been marked Plaintiff's Exhibits 1 to 30, inclusive, for identification, were received in evidence and marked PLAINTIFF'S EXHIBITS NOS. 1 to 30, respectively.)

Mr. Hartigan: Well, Mr. Mikva, are you resting your case?

Mr. Mikva: I rest my case.

659 The Plaintiff Rested Its Case in Chief.

The Master: This is off the record, Mr. Reporter, please.

(There occurred at this point an informal discussion, outside the record, which, at the direction of the Master, was not taken down by the reporter.)

The Master: This case will be adjourned to tomorrow morning at eleven o'clock a. m.

(Whereupon the hearing in the above-entitled cause was adjourned to Thursday, October 20, 1955, at eleven o'clock a. m.)

* * * * *

666 And finally, therefore, the only evidence before the Master should be the film itself to enable him to determine whether and to what extent the censor authorities' decision was proper.

The Master: This is off the record, Mr. Reporter, please.

(There occurred at this point an informal discussion, outside the record, which, at the direction of the Master, was not taken down by the reporter.)

The Master: Gentlemen, I have considered the arguments, and my rulings are:

First. That the motion of the defendants to strike all the evidence except the film, Defendants' Exhibit No. 1, is denied.

667 Second. And it is my ruling that the objections of the City to the admissibility of exhibits and to the questions and answers on the basis of their being not relevant are overruled, and that Plaintiff's Exhibits Nos. 1 through 30, are admitted into evidence.

(The documents referred to above, which have been heretofore marked Plaintiff's Exhibits Nos. 1 to 30, respectively, for identification, were received in evidence marked Plaintiff's Exhibits Nos. 1 to 30, respectively.)

The Master: Now, Mr. Mikva, is there any further evidence that you wish to introduce?

Mr. Mikva: Master, I have no further evidence at this time, and rest my case at this time.

The Plaintiff Rested Its Case in Chief.

The Master: Mr. Hartigan, do you wish to pro-
668 ceed further?

Mr. Hartigan: The City has no further evidence, if the Master please.

We rest our case.

The Defendants Rested Their Case.

Mr. Mikva: In the light of the City's statement, I have no rebuttal, obviously, and, Master, we consider the evidence closed.

The Master: This is off the record.

(There occurred at this point an informal discussion, outside the record, which, at the direction of the Master, was not taken down by the reporter.)

The Master: Well then, gentlemen, will we be ready to proceed with oral argument at 2:30 this afternoon?

Mr. Mikva: Yes, Master.

• • • • •

26 And afterwards, to wit, on the 15th day of November, 1955, being one of the days of the regular November term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable J. Sam Perry, District Judge, appears the following entry, to wit:

27 IN THE UNITED STATES DISTRICT COURT.

• • (Caption—55-C-1006) • •

It Is Ordered by the Court that the plaintiff shall file an additional bond with surety in the sum of Four Thousand Seven Hundred Fifty Dollars ($4,750.00) within ten days from this date.

28 And afterwards, to wit, the 28th day of November, 1955 there was filed in the Clerk's office of said Court a certain Additional Security For Costs in words and figures following, to wit:

29 UNITED STATES DISTRICT COURT.

• • (Caption—55-C-1006) • •

ADDITIONAL SECURITY FOR COSTS.

We enter our security for costs in this cause, and promise to pay on demand, all fees which the Plaintiff must by law pay to the clerk, marshal or other officer of this court, and all costs which may accrue to any other party in this action; and in default of payment by the Plaintiff of any fees and costs ordered or adjudged to be paid by the Plaintiff, we hereby agree and stipulate that execution may issue against our property for all costs not ex-

ceeding Forty seven hundred and fifty dollars ($4,750.00), taxed against the Plaintiff.

Sealed with our seal and dated at Chicago, Illinois, this 28th day of November, A. D. 1955.

United States Fidelity and Guaranty Company,
By J. R. Solomon, (Seal)
Attorney-in-Fact.

Acknowledged before me this ..... day of ..... 19.....

.....
Notary Public.

30 And afterwards, to wit, the 31st day of January, 1956 there was filed in the Clerk's office of said Court a certain Master's Report and Master's Certificate of Costs in words and figures following, to wit:

31 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—55-C-1006) * *

MASTER'S REPORT.

The undersigned, David J. Shipman, Master in Chancery in and for said Court, respectfully reports to the Honorable J. Sam Perry, Judge of said Court, that pursuant to order of reference heretofore entered herein the undersigned has heard and taken evidence; has caused said evidence and the proceedings before him to be transcribed; files herewith the transcript of such evidence and proceedings together with the exhibits offered and his certificate of costs; and submits hereunder his findings of fact, conclusions of law and recommendations.

32 **Introductory.**

1. This is an action for an order (a) directing the defendants (sometimes herein referred to simply as the City) to issue a permit for the plaintiff to exhibit a motion picture entitled "The Game of Love"; (b) restraining the City from interfering with the plaintiff in the exhibition of the picture; and (c) providing such other and further relief as justice shall require.

2. Federal jurisdiction is invoked because the amount in controversy exceeds $3,000.00 exclusive of costs and interest; and because there is diversity of citizenship between the parties as well as because the action arises under the First and Fourteenth Amendments to the Constitution of the United States.

3. The City had denied the application of the Plaintiff for a permit to exhibit the picture on the ground that it was immoral and obscene under a city ordinance requiring the City to refuse a permit if a picture is immoral and obscene.

33 4. The picture is based on a novel by Colette. It deals with the experience of a boy and a girl each about 16 years of age. In one episode it is clearly implied that the boy has sexual relations with an older woman and in another it is reasonable to infer that the boy and girl have such relations with each other. (The Master will treat the picture in greater detail in his findings of fact.)

5. The film of the picture was made part of the complaint as Exhibit A, and was introduced in evidence by the City as Defendants' Exhibit 1.

6. A copy of the City Ordinance with reference to the exhibition of motion pictures (Municipal Code of the City of Chicago, Chapter 155, Sections 155-1 through 155-7) was attached to the complaint as Exhibit B.

7. During the hearings the film was exhibited to the Master in the presence of the Court Reporter and of Counsel for the parties.

34 8. The Plaintiff presented as witnesses, its own Vice-President, and under Rule 43b the City's Commissioner of Police, his Deputy in Charge of Censorship matters, and the five persons who were members of its Censorship Board at the time the film was considered for a permit.

9. The Plaintiff introduced exhibits to show certain artistic awards for the film; the processing of its application for a permit; part of the records of the City in the processing of another film; and numerous reviews, announcements and advertisements about the film clipped from newspapers in other cities where the film was shown.

10. The City introduced no witnesses but introduced the film as its exhibit and arranged for its showing to the Master.

11. Counsel for both sides argued orally and submitted written briefs.

12. From the pleadings, the evidence presented and the arguments of counsel, the Master understands the respective positions of the parties briefly to be as hereunder set forth.

35 13. The Plaintiff's position is as follows:

a. The Ordinance is unconstitutional on its face under the First and Fourteenth Amendments to the Constitution.

b. Even though the Ordinance were held to be constitutional, the operations of the City's censorship authorities are unconstitutional and particularly so with reference to the processing of this film.

c. Even though the Ordinance and the operations of the City's censorship authorities are constitutional, the picture does not fall within any of the categories set forth in the Ordinance for which permits are to be denied. More specifically, that the picture is not immoral or obscene.

14. The City's position is as follows:

a. The Ordinance is constitutional under the First and Fourteenth Amendments.

b. The operations of the City's censorship authorities under the Ordinance are constitutional and particularly so with reference to the processing of this film for a permit.

36 c. The picture is immoral and obscene.

15. As the hearings progressed and especially after viewing the film, it appeared to the Master that the interests of children and adolescents might require different treatment from adults; and that this question might justify an exploration of other evidence and arguments than those offered by the parties in support of their respective positions.

16. The Master made known to counsel for the parties his special concern in this area and a number of discussions were held with counsel for both sides in an effort to bring such evidence and arguments before the Master.

17. The appointment of amici curiae and the summoning of experts in fields such as education, child psychology, art, literature and semantics either by the parties, or by the Master, or by both, were discussed.

18. As a result of these discussions and in order to save the time and expense incident to such an effort,

37 counsel for the Plaintiff offered to assure the Master that the Plaintiff would not show or permit the showing of the film to any persons under the age of eighteen and

would not object to a restraining order to that effect provided that any rights, if any, which it might otherwise have to show the film would in no way be impaired.

19. In confirmation of its offer, counsel for the Plaintiff delivered a letter dated January 25, 1956 to the Master and copy to counsel for the City. An extra copy of that letter is initialled by counsel for both sides and made part of the record as Master's Exhibit 1.

20. In view of this offer by Plaintiff, the Master, except where otherwise indicated, considered his findings and conclusions on the basis that the picture would be shown only to persons over the age of eighteen.

21. In the absence of other evidence than is now in
38 the record, the Master's findings and conclusions would not be modified if the picture were to be exhibited only to adults over a higher age than eighteen; but as indicated they might be different if the picture were to be exhibited to persons under eighteen or under a lower age.

22. At the suggestion of the Master and by agreement of Counsel in order to keep the record concise, the proceedings were repeatedly taken off the record by the Master or the parties. As a result, while the record is much less cumbersome and confusing than it might otherwise have been, it does not fully disclose the extent to which counsel cooperated with each other and with the Master in the presentation of this case.

23. The Master trusts that the Court will not consider it amiss for the Master to take this opportunity to commend Counsel, Messrs. Abner J. Mikva and Felix J. Bilgrey, for Plaintiff, and Messrs. John C. Melaniphy, Edward R. Hartigan and Daniel J. White for the City, for their consistent courtesy, industry and cooperation.

Findings of Fact.

39 F-1. Plaintiff, Times Film Corporation, is a corporation organized and existing under the laws of the State of New York.

F-2. Defendant, City of Chicago, is a Municipal Corporation organized and existing under the laws of the State of Illinois.

F-3. Defendant, Richard J. Daley, is the Mayor of the City of Chicago.

F-4. Defendant, Timothy J. O'Connor, is the Commissioner of Police of the City of Chicago.

F-5. Plaintiff is a citizen of the State of New York and the Defendants are all citizens of the State of Illinois.

F-6. The action arises under the First and Fourteenth Amendments to the Constitution of the United States.

F-7. The matter in controversy exceeds the sum or value of $3,000.00 exclusive of interest and costs.

40 F-8. All of the Defendants were properly served with summons and entered their appearances herein.

F-9. This Court has original jurisdiction of this action.

F-10. This Court has jurisdiction of the parties.

F-11. The Plaintiff has the exclusive right to distribute, to license for exhibition, and to exhibit in the City of Chicago a certain photoplay or motion picture film entitled "The Game of Love" a print of which picture was attached to the complaint as Exhibit A and made a part thereof and introduced in evidence by the Defendants as their Exhibit 1.

F-12. Said motion picture, herein sometimes referred to as the film, is an adaptation of a novel entitled "Le Ble en Herbe" written by the French authoress Gabrielle Claudine Jouvenal under the pen name of Colette.

41 F-13. At all times relevant to this action, the Ordinance of the City of Chicago attached to the complaint as Exhibit B, was in full force and effect.

F-14. On or about May 6, 1955, Plaintiff applied to Defendant Police Commissioner O'Connor for a permit to exhibit the film.

F-15. On June 2, 1955 Defendant Police Commissioner O'Connor notified Plaintiff that he would not issue a permit because the commanding officer of his censor unit had rejected the film on the ground that it was not acceptable to standards of decency with immorality featured and dialogue unfit.

F-16. On June 6, 1955 Plaintiff appealed the decision of Defendant Police Commissioner O'Connor to Defendant Mayor Daley.

F-17. On June 20, 1955 Defendant Mayor Daley denied the appeal of the Plaintiff and based his denial on the ground that the film was immoral and obscene.

42 F-18. As a result the Plaintiff was refused a permit to exhibit the film "The Game of Love" in the City of Chicago.

F-19. Except for the purpose of evidence in this case, the Plaintiff has not publicly exhibited the film in the City of Chicago.

F-20. The Plaintiff has been directly damaged by not being able publicly to exhibit said film.

F-21. According to the testimony, the film is a faithful adaptation of the novel "Le Ble en Herbe".

F-22. In the course of the proceedings before him, the parties requested the Master to set forth in his findings the story of the film as it appeared to him.

F-23. The story as it appeared to the Master deals primarily with the experiences of two adolescents: a boy Philip, and a girl Vinca, each about 16 years of age.

43 F-24. They are having their summer vacation on the coast of France with their respective parents who live in the same boarding house.

F-25. At the beginning of the picture it appears that the girl has a romantic attachment for the boy; but that the boy is still at that state of adolescence in which sports interest him more than girls do, and he rejects her advances.

F-26. In one of the opening episodes the boy is canoeing off shore when his canoe is upset. In the confusion he loses his clothes and finds himself coming up on shore without them. He finds a little girl's large straw hat close to the water's edge and, covering his private parts with the hat, he races along the beach.

F-27. At the same time a girls' school is having an outing on the beach and one of the little girls seeing the boy running along the beach with the hat says something to the effect that he need not try to cover himself because they have seen everything already.

44 F-28. The boy's backside is visible to the motion picture audience as he runs along the beach, but none of the boy's private parts is visible and there is no other problem of nudity connected with the film.

F-29. As the story develops, a mature woman, somewhere in her 30s or 40s, comes to the coast. The boy delivers bread to her home. She is attracted by him.

F-30. No acts of seduction nor any physical contact is shown between the woman and the boy; but it is clearly implied and not denied that she seduces him and that they are engaged in intimate sexual relations.

F-31. His seduction causes an awakening of the boy's sexual desires and for a period of several days and nights he is almost constantly in her company at the house which she occupies.

F-32. During this period the boy completely neglects his girl friend and his family.

45 F-33. Then for some reason which is not clear, the woman decides that the attachment must end and she terminates it abruptly.

F-34. The boy is greatly disturbed by the termination of his new and deeply emotional experience.

F-35. Meanwhile, the girl and the boy's mother both suspect what has been going on. Among other things, they observe a bite mark on the boy's shoulder which was apparently sustained in his relations with the older woman.

F-36. Subsequently the girl and boy acknowledge their romantic interest in each other and enter into a more mature relationship in which it may be reasonably inferred that they also have sexual relations.

F-37. This new relationship appears to bring them happiness.

F-38. It appears clearly to have resulted in great pleasure and satisfaction to the girl.

46 F-39. Then the summer comes to a close and the picture ends on a slight note of melancholy, such as one might experience at the end of a long summer vacation, or as if one were feeling the first pangs of growing older.

F-40. The parties agree that the above findings of the Master are a fair summary of what the film shows.

F-41. The picture nowhere expressly shows that serious and harmful consequences will result from the physical relations implied or inferred.

F-42. Whether or not harmful consequences of the conduct in question are suggested depends primarily on the maturity and experience of the persons who view the picture.

F-43. To most persons over the age of 18 harmful effects of such conduct would be suggested.

F-44. To most children and persons in their adolescence, harmful effects would not be suggested.

47 F-45. The age of eighteen is a reasonable modal point over which the consequences of such conduct would be reasonably inferred and under which they would not.

F-46. The words immorality and obscenity have many meanings and the Ordinance itself neither states nor clearly embodies any given meaning.

F-47. Sexual relations between an unmarried adolescent and an adult and between unmarried adolescents are clearly contrary to the mores of the preponderant majority of the people of the City of Chicago, of the State of Illinois, and of the United States. Such conduct is ethically disapproved, condemned and termed immoral by most and obscene by some.

F-48. The City offered as its definition of immorality and obscenity the following words covering this same Ordinance from the opinion of the Supreme Court of Illinois in *American Civil Liberties Union* v. *Chicago*, 3 Ill. 2nd 334, in which, after equating the terms immoral,
48 and obscene as used in the Ordinance, the Court said:

"That a motion picture is obscene within the meaning of the ordinance if, when considered as a whole, its calculated purpose or dominant effect is substantially to arouse sexual desires, and if the probability of this effect is so great as to outweigh whatever artistic or other merits the film may possess. In making this determination the film must be tested with reference to its effect upon the normal, average person."

F-49. When considered as a whole, the calculated purpose of the film in litigation is not substantially to arouse the sexual desires.

F-50. The testimony of the censorship authorities showed that some of them were sexually stimulated by the film but that a majority were not.

F-51. The evidence further showed that the majority of the censorship authorities did not take into consideration the question whether or not the picture tended to arouse sexual desires.

F-52. The censorship authorities did not take into consideration the artistic merit of the film.

F-53. The censorship authorities did not take into consideration whether the picture was a classic or based on a classic.

49 F-54. The Plaintiff concedes that the Commissioner of Police is a great police officer, that his Deputy in Charge of Censorship is an honest, industrious, able police officer, and that the members of the board are conscientious, honorable, well-meaning citizens.

F-55. The evidence shows that there are no particular qualifications for appointment to the Board.

F-56. None of the members has any special education,

training or skill in the fields of sex, motion pictures or the arts.

F-57. The film has been shown in over 150 cities in the United States.

F-58. There was no evidence offered of any increase in crime, sexual or otherwise, or other harmful effects traceable to the exhibition of this picture where it has been shown.

F-59. The motion picture received two awards: The Diploma of Merit at the Eighth International Edinburgh Film Festival, and the Grand Prize for French Cinema of the French Society for the Encouragement of Art and Industry.

50 F-60. The evidence shows that these are the equivalent of the American Oscar awarded to American films by the American Academy of Motion Pictures.

F-61. A number of published reviews were introduced in evidence by Plaintiff and the preponderance of opinion in these reviews is that the film has substantial artistic merit.

F-62. Some of Plaintiff's own exhibits indicate however, that the motion picture is a sophisticated affair primarily for adults.

F-63. Some of Plaintiff's own exhibits expressed the view that this motion picture is definitely not for children.

F-64. The City requested that the Master apply the aforementioned definition of the Illinois Supreme Court to the film upon the basis of his own reactions to the film.

F-65. The Plaintiff agreed that this might be done without conceding that the Illinois Supreme Court's definition was binding and without conceding its other

51 legal positions, namely that the Ordinance was unconstitutional on its face, that the procedures of the censorship authorities were unconstitutional, and that the film itself was neither immoral nor obscene.

F-66. The Master expressed his reluctance to act as a censor, especially where one of the underlying issues was whether anyone could act as a censor.

F-67. The Master further realizes that his findings in this respect must necessarily in large part be subjective at least in the sense that the Master is uncertain how far his reaction to the film is the same as the reactions of others who might see it.

F-68. However, the Master has acceded to the request of the City and the agreement of the Plaintiff and submits his findings in this respect hereunder.

F-69. Concerning the applicability of the definition, the Master finds from viewing the film:

a. That when considered as a whole, the calculated purpose of the film is not substantially to arouse sexual desires.

52 b. That the dominant effect of the film when considered as a whole, however, would substantially arouse sexual desires in some normal adult persons; would not substantially arouse sexual desires in other normal adult persons; and would not arouse sexual desires at all in other normal adult persons.

c. That the Master cannot determine with any degree of accuracy even in rough percentages the comparative number of persons who would be substantially aroused, slightly aroused and not aroused at all.

d. That the picture is more likely to arouse sexual desires in the normal adult person than for example, a street car, a flag pole, a pocket book or a lock of hair, but less likely to arouse sexual desires in the normal adult person than for example, a pretty girl in a modern bathing suit, a dancing line in a musical comedy or the many advertisements appearing in reputable publications for lingerie, cigarettes and a large variety of other products.

e. That the dominant effect of the film on substantial numbers of children and adolescents under the age
53 of 18 might well be to arouse their sexual desires.

f. That its exhibition to juveniles and adolescents might lead to an increase among them of seduction, delinquency and statutory rape.

g. That the exhibition of the picture to such juveniles and adolescents would misinform and mislead substantial numbers of them as to the moral attitudes of our society and as to the serious consequences to juveniles and adolescents of emulating the conduct dealt with in the film.

F-70. The Master makes the same findings also when he considers his viewing of the film together with all the other evidence introduced.

F-71. In making the above findings with regard to the effect of showing the film to juveniles and adolescents, the Master is mindful of the circumstances under which motion pictures are often viewed by juveniles and adolescents.

54 F-72. The Master has in mind for instance, the prevalence of romancing and spooning among juveniles and adolescents in motion picture theaters and in automobiles at outdoor theaters.

F-73. No attempt was made by the City to inform the censorship authorities of, or to require them to apply, the standards of immorality and obscenity set forth by the decision of the Illinois Supreme Court in *American Civil Liberties Union* v. *Chicago*, 3 Ill. 2d 344.

F-74. The censorship authorities made no attempt to nor did they apply these standards.

F-75. No standards were prescribed or suggested by the City to be used by the censorship authorities in determining whether a motion picture is immoral or obscene other than the Ordinance itself.

F-76. The censorship authorities have not developed any consistent standards, and many of the individual tests used by the censors are irrelevant to any notion of immorality or obscenity.

55 F-77. The Master is unable to find that the picture is immoral or obscene under the definition of the Supreme Court of Illinois.

F-78. The Master is unable to find that the picture is immoral or obscene except as hereinafter set forth.

F-79. If the Ordinance means that a picture which while not showing the actual conduct, implies that conduct has taken place, which is clearly contrary to the mores of the preponderant majority of the people of the City of Chicago, or of the State of Illinois or of the United States, is immoral or obscene, then in that sense the picture is immoral or obscene.

F-80. If the Ordinance means that such a picture is immoral or obscene if it also suggests that such conduct may be pleasant without clearly showing or clearly suggesting the harmful consequences of such conduct, then in that sense the picture is immoral or obscene.

56 Conclusions of Law.

C-1. The Court has jurisdiction of the parties and of the subject matter of this cause of action which is properly brought under Sections 1331 and 1332 of Ttitle 28 of the United States Code.

C-2. The right of freedom of expression is inherent in

our law, basic in our philosophy of government, essential to our way of life and guaranteed by the First and Fourteenth Amendments to our Constitution.

C-3. The greatest protection possible will be afforded this right consistent with other basic rights or interests.

C-4. Our Courts have been even more zealous in protecting this right where prior restraints are involved than in the area of punishment for abuse.

C-5. But the right of freedom of expression is not unlimited.

C-6. And even protection against prior restraints is not unlimited.

57 C-7. However, the limitation of protection against prior restraints will be recognized only in exceptional cases.

C-8. Such limitations will be considered in cases such as where there is clear and present danger to the security of the nation, where there is an incitement to violence, where the expression itself has the harmful effects of force rather than an appeal to reason, or where some other high and overriding interest or right requires it.

C-9. But such limitations will be permitted as narrowly as possible to accommodate these other rights or interests, and must themselves be limited and controlled by definite, reasonable and practicable standards.

C-10. Expression by means of motion pictures is included within the protection afforded freedom of expression by the First and Fourteenth Amendments to the Constitution.

58 C-11. With regard to the present case, one question before us is whether a City Ordinance insofar as it directs the City authorities to prevent the exhibition of a motion picture on the ground simply that it is "immoral or obscene" is unconstitutional as an infringement of the right to freedom of expression.

C-12. The words "immoral or obscene" each have so many meanings and are so vague that it is impossible to conclude either (a) what if any overriding interest the Ordinance seeks to protect or (b) that standards are provided adequate to confine the limitation on freedom of expression to the area in which such a limitation might be recognized.

C-13. On its face therefore, this Ordinance appears to be unconstitutional.

C-14. However, before declaring State Statutes or City Ordinances unconstitutional for vagueness and lack of standards, the Federal Courts may look for clarification and standards to the decisions of the State's Courts with regard to the enactments in question.

59 C-15. This Ordinance and the very words "immoral and obscene" were recently before the Supreme Court of Illinois in *American Civil Liberties Union* v. *Chicago*, 3 Ill. 2d 334.

C-16. In the opinion in that case the Illinois Supreme Court equated the terms immorality and obscenity as used in the Ordinance and held "that a motion picture is obscene within the meaning of the Ordinance if, when considered as a whole, its calculated purpose or dominant effect is substantially to arouse sexual desires, and if the probability of this effect is so great as to outweigh whatever artistic and other merits the film may possess".

C-17. The Court also held that "In making this determination the film must be tested with reference to its effect upon the normal, average person."

C-18. The Court further held that the determination of the censor authorities was subject to judicial review and that upon such review "the plaintiff does not carry a burden of proving that that action was arbitrary and unreasonable, but rather that it must affirmatively be made to appear that the film fairly falls within the proscriptive terms of the ordinance".

60 C-19. Thus the Supreme Court of Illinois has defined the terms "immoral and obscene" so that the interest which the City seeks to protect by its limitation on freedom of expression may be recognised.

C-20. At the same time the Supreme Court of Illinois attempts to furnish a standard by which the limitation may be applied and by which it may itself be limited.

C-21. Moreover by its holding the Supreme Court of Illinois provides certain procedural requirements in order to assure due process in the application of the Ordinance.

C-22. It now becomes our task in the light of this definition of the Supreme Court of Illinois to determine first, whether the interest therein disclosed is adequate to justify the limitation which the Ordinance seeks to impose on the right of freedom of expression.

61 C-23. With due respect to the high standing of the Supreme Court of Illinois before the bar of this state

and of the country generally, and for the ability and breadth of view of the Justice who wrote the opinion, we are unable to conclude that the City's interest in preventing the probability of the arousal of sexual desires in normal persons is so overriding that it justifies the City's attempt to limit the basic right of freedom of expression guaranteed by the First and Fourteenth Amendments to the Constitution.

C-24. A moment's reflection, not only on the literature and art of our country, but also, for instance, its advertising, its theatre and television, its motion pictures and newspapers, its songs and music, its fundamental institutions of courtship, marriage and the family, and on many other phases of our way of life, and the communications incident and desirable or necessary thereto, casts great doubt on the proposition that sexual desires or their arousal are in themselves evil, or considered evil by the preponderant majority or even by a substantial minority of our people.

62 C-25. That the mere arousal of sexual desires in itself is not an evil is implicit not only in the contentions of plaintiff's counsel, but in the testimony of some of the members of the censorship board.

C-26. Nor must the Court be unaware that there is substantial, and perhaps preponderant, opinion among physicians, psychiatrists and other social scientists, among philosophers, lawyers and social workers, and among the people generally, that sexual desires and their arousal are an accepted part of our way of life.

C-27. At least it cannot be concluded that, for the purposes of limiting the basic constitutional protection to freedom of expression, arousal of sexual desires in normal persons is in the same category as danger to the nation at war, or incitements to riots and acts of violence, or to the overthrow by force of orderly government, or even with expressions which have the effects of force.

C-28. The Master is impelled to the conclusion and
63 does conclude that the interest of the State in preventing the probability of the arousal of sexual desires in normal persons is not a sufficiently overriding consideration to justify an Ordinance authorizing prior restraint on freedom of expression.

C-29. This is not to say (and the Master cannot emphasize this too strongly) that to prevent the arousal of

sexual desires among certain classes of persons under certain circumstances may not concern the State to the extent that its interest may be overriding and justify a carefully drawn limitation even on the basic protection afforded freedom of expression against prior restraint.

C-30. The record shows and the parties are fully aware of the Master's deep concern since viewing the picture with the problem of permitting its exhibition to children and adolescents.

C-31. The State has a basic interest in the welfare of its children and adolescents. This also is inherent in our way of life and embodied in all areas of our law. Included in this interest are their proper education and their special protection against harm because of their tender susceptibilities, their immaturity and their inexperience.

64 C-32. This interest is sufficiently overriding so that under proper circumstances a carefully drawn limitation upon the protection afforded freedom of expression even against prior restraints should be recognized.

C-33. After viewing the picture, the Master asked the parties whether they could give special attention in their presentation of evidence, their arguments, their briefs or possibly by stipulation, to the circumstances under which motion pictures are shown to and viewed by children and adolescents; to the probable effects upon them of the exhibition of this picture to them; and to the possibility of excluding them even though the Ordinance should be held invalid or inapplicable to this picture.

C-34. Counsel expressed a desire to comply with the Master's request but because of limitations of time and expense were unable to do so to the extent they and the Master desired. As a result the Master had considerable difficulty preparing a report which he was of the opinion should include findings, conclusions and recommendations in this area.

65 C-35. However, for the purpose of this report as it regards this picture, that problem has now been resolved. For the Master is in receipt of assurance from Plaintiff's counsel that Plaintiff will not permit this picture to be exhibited to persons under the age of eighteen. The Master considers this age a practicable, modal line between adolescents and adults.

C-36. The Master is unable to conclude that the Ordinance clearly discloses the interest which the City seeks

to protect against the right of freedom of expression, or standards, or procedures by which the limitation on the right may be determined.

C-37. The Master is unable to conclude that the film falls within the definition of immorality and obscenity set forth by the Supreme Court of Illinois.

C-38. The Master is unable to conclude that the interest disclosed by the Supreme Court of Illinois is so overriding that it can support the limitation on freedom of expression embodied in the Ordinance.

66 C-39. Yet the Court whether or not it adopts all or any of the foregoing conclusions of the Master concerning the interest and standards disclosed by the Supreme Court of Illinois, may still desire to examine the interest and standards if any, and the procedures, disclosed in the actual operations of the City's censorship authorities.

C-40. The Master is constrained to conclude that as revealed by the evidence in this case, the censorship authorities in their activities generally and particularly with reference to the censorship of this picture, were either unaware of or else completely disregarded even the interest disclosed and the standards provided by the Supreme Court of Illinois.

C-41. The Master further concludes that the operations of the censorship authorities neither disclosed any overriding interest they were protecting nor revealed any consistent standards they were applying.

67 C-42. The Master therefore concludes that, even if the Court should find the Ordinance valid on its face or by construction of the Illinois Supreme Court, the application of the Ordinance by the censorship authorities was unconstitutional, and particularly so with reference to the film entitled the "Game of Love."

C-43. The Master wishes to make it clear to this Honorable Court that he in no sense means to imply that the censorship authorities are not high minded, capable public servants. On the contrary, they are to be commended for their conscientious devotion to their duties as they see them and for their cooperation and courtesy as witnesses.

C-44. The Master has read and studied the First and Fourteenth Amendments; many of the cases of the United States Supreme Court, of the Illinois Supreme Court and of other Courts dealing with these amendments and with

the right of freedom of expression; many other works of literature and law upon the subject; the Ordinance in question; the transcript in this case; and the briefs of counsel. The Master has viewed the picture and listened to the arguments of counsel. Yet the Master pro-
68 foundly doubts whether at least under this Ordinance he could do any better job of censoring motion pictures than these five citizens and excellent public servants.

C-45. The difficulties seem to arise from the Ordinance itself and perhaps from the statute under which it was enacted. These were passed many years ago and are not young and vigorous enough to contend with the tremendous developments in science, education, public opinion and constitutional law. Perhaps a new Ordinance, clearly disclosing overriding interests, carefully limited, defining standards, and providing for proper procedures, would receive constitutional recognition as a limitation even on the protection afforded against prior restraint on freedom of expression. And perhaps such an Ordinance could be constitutionally administered by persons like the members of the censor board or by these very members themselves.

C-46. But assuming that the Ordinance should be allowed to stand, there still remains to be reported the Master's conclusions as to the remaining question: Whether the motion picture is immoral or obscene?

C-47. The Master concludes that it has not been made affirmatively to appear as required by the Illinois
69 Supreme Court that with reference to its effect on the normal, average person, the film's calculated purpose or dominant effect is substantially to arouse sexual desires, and that the probability of this effect is so great as to outweigh whatever artistic or other merits the film possesses.

C-48. The Master further concludes that when considered as a whole, neither the calculated purpose nor the probable dominant effect of the film is substantially to arouse sexual desires in the normal average person, nor is the probability of such an effect so great that it outweighs the artistic or other merits of the film.

C-49. The Master comes to these conclusions concerning the effect of the film whether he considers only the testimony and exhibits introduced into evidence by the Plaintiff; or only his own viewing of the film introduced by the Defendants; or whether he considers both.

C-50. The Master further concludes that the public exhibition of a motion picture to adults cannot be restrained merely because it implies conduct and deals with situations which are contrary to the mores of a preponderant majority of the community or of the State or of the nation, even if it does not express or clearly suggest the harmful consequences of such conduct.

C-51. The Master further concludes that Plaintiff has been directly damaged by not being permitted to exhibit the film and will continue to be so damaged unless Defendants are restrained from interfering with its exhibition.

Recommendations.

R-1. That the Court adopt the Findings of Fact and Conclusions of Law herein submitted;

R-2. That the Defendants be restrained from interfering with the public exhibition of the motion picture entitled "The Game of Love";

R-3. That the Plaintiff be restrained from the exhibition of the motion picture to persons under the age of eighteen;

R-4. That the Master's Certificate of Costs be approved; the Master's fees paid by the application of the funds now on deposit with him and the payment of the balance by Plaintiff; and upon such payment the Plaintiff's bond be discharged and the Costs taxed against Defendant, City of Chicago.

Respectfully submitted,
David J. Shipman,
Master in Chancery United States District Court.

Dated at Chicago, Illinois, this 31st day of January, 1956.

72 IN THE UNITED STATES DISTRICT COURT.
• • (Caption—55-C-1006) • •

MASTER'S CERTIFICATE OF COSTS.

The undersigned, David J. Shipman, Master in Chancery in and for said Court, hereby certifies to the Honorable J. Sam Perry, Judge of said Court, that the following taxable costs were incurred in the course of this reference.

1. The Master with the agreement of counsel, appointed the firm of Walter J. Eaman, court reporters of Chicago, Illinois, to attend the hearings, take stenographic notes thereof and have same transcribed.

2. Counsel further agreed with the approval of the Master that the charge of the court reporters for their attendance and for the original of the transcription should be taxed as costs.

73 3. Pursuant to such appointment, said court reporters attended the hearings for a total of 39 hours and presented the original of their stenographic transcription containing 760 pages.

4. Said Court reporters have presented their statement amounting to $195.00 for attendance and $570.00 for the original transcript, making a total of $765.00.

5. Of said sum Plaintiff has already paid $382.50, and Defendants have paid $382.50, leaving no balance due the court reporters.

6. Said sum of $765.00 is a fair, reasonable and customary charge for such services, and should be taxed as costs herein.

7. The Master's services included examination of the court files and records, analysis of the pleadings, study of authorities, setting and conducting hearings, passing on matters of law and evidence, listening to oral arguments, conferences with counsel, examining and reviewing transcripts and exhibits, studying briefs of counsel and preparation of his report and certificate.

8. The time the Master has spent in and about the matters covered by this reference exceeds 200 hours. However, the Master spent much of this time because of the general importance of the questions involved in this
74 matter, the desire of the parties that the Master consider and report on the facts and issues in consid-

erable detail, and the Master's own desire and feeling of obligation to consider questions not only directly affecting the positions taken by the parties but also affecting areas of public interest not represented by the positions taken by the parties.

9. The Master therefore, and also considering the expense of this litigation to the parties, has not taken into account in setting his fee the time spent by him in excess of 100 hours.

10. The Master is of the opinion that a fair and reasonable allowance for his services rendered herein would be in excess of $3,000.00.

11. The Master therefore respectfully requests that the Court approve as taxable costs in connection with this reference the following sums:

a.	For Court Reporter's Services	$ 765.00
b.	For Master's Fees	3,000.00

Respectfully submitted,
David J. Shipman,
Master in Chancery United State District Court.

Dated at Chicago, Illinois, this 31st day of January, 1956.

75 And afterwards on, to wit, the 8th day of February, 1956, came the Defendants by their attorneys and filed in the Clerk's office of said Court their certain Objections To Master's Report in words and figures following, to wit:

76 IN THE UNITED STATES DISTRICT COURT.
(Caption—55-C-1006)

OBJECTIONS TO MASTER'S REPORT.

The City of Chicago, a municipal corporation, Richard J. Daley and Timothy J. O'Connor, defendants herein, object to the Report of David J. Shipman, Master in Chancery, filed in this cause on the 31st day of January, 1956, on the following grounds:

(1) The Master erred in admitting in evidence all documents and testimony introduced by the plaintiff over the objections of the defendants. The Master should have ruled that the determination of whether the moving picture is or is not obscene must be determined by examina-

tion of the picture and not otherwise, as decided by the Supreme Court of Illinois in the case entitled *American Civil Liberties Union, a New York corporation* v. *City of Chicago, et al.*, 3 Ill. 344.

77 (2) The Master erred in finding that the moving picture is not obscene. The Master should have found that the moving picture is obscene.

(3) The Master erred in holding that Chapter 155, Sections 155-1 through 155-7 of the Municipal Code of Chicago is unconstitutional. The Master should have held that said ordinance is constitutional as decided by the Supreme Court of Illinois in the case entitled *American Civil Liberties Union* v. *City of Chicago, et al.*, 3 Ill. 344.

(4) The findings of the Master as to the content of the moving picture support the position of the defendants that said moving picture is obscene.

(5) The Master erred in finding that the motion picture is not obscene insofar as adults over the age of eighteen years are concerned but is obscene as to children eighteen years and under and said holding is inconsistent with the holding that the ordinance is unconstitutional.

78 (6) The Master erred in holding that the calculated purpose of the film in litigation is not substantially to arouse sexual desires.

(7) The Master erred in holding that the film has been shown in over 150 cities in the United States.

(8) The Master erred in admitting evidence that the motion picture received two awards in foreign countries.

(9) The Master erred in admitting in evidence the number of published reviews.

(10) From the findings of the Master it is impossible to determine what findings were controlling in his mind in order to arrive at his conclusions, in that he states, page 22, "That the dominant effect of the film when considered as a whole, however, would substantially arouse sexual desires in some normal adult persons; would not substantially arouse sexual desires in other normal adult persons; and would not arouse sexual desires at all in other normal adult persons."

(11) The Master erred in holding that the film was
79 not obscene when considered in the light of his finding "that the dominant effect of the film on substantial numbers of children and adolescents under the age

of 18 might well be to arouse their sexual desires. That its exhibition to juveniles and adolescents might lead to an increase among them of seduction, delinquency and statutory rape. That the exhibition of the picture to such juveniles and adolescents would misinform and mislead substantial numbers of them as to the moral attitudes of our society and as to the serious consequences to juveniles and adolescents of emulating the conduct dealt with in the film."

(12) The Master erred in admitting the testimony of the members of the censor board introduced by the plaintiff. The question is not whether the members of the censor board did or did not use proper standards in determining whether the motion picture is obscene, but the question is whether the motion picture as viewed by the court is in itself obscene. In *American Civil Liberties Union* v. *City of Chicago, et al.*, it was held that expert testimony was not necessary to determine whether or not the motion picture was or was not obscene.

80 (13) The Master erred in holding that the words "immoral or obscene" are vague and indefinite.

(14) The Master erred in holding "that it has not been made affirmatively to appear as required by the Illinois Supreme Court, that with reference to its effect on the normal, average person, the film's calculated purpose or dominant effect is substantially to arouse sexual desires, and that the probability of this effect is so great as to outweigh whatever artistic or other merits the film possesses." Such holding is contrary to his findings of facts.

(15) The Master erred in holding:—"The Master comes to these conclusions concerning the effect of the film whether he considers only the testimony and exhibits introduced into evidence by the plaintiff; or only his own viewing of the film introduced by the defendants; or whether he considers both." The Master hereby makes it impossible for the parties and the court to determine upon what facts he has made his findings and certainly he is in error when he says that he could determine the question from

81 the testimony and the exhibits introduced into the evidence by the plaintiff without taking into consideration the actual viewing of the film.

(16) The Master erred in holding that the plaintiff "has been directly damaged by not being permitted to exhibit the film and will continue to be so damaged unless

defendants are restrained from interfering with its exhibition."

(17) The Master should have held that the decision of the Supreme Court as to the definition of "immoral or obscene" is controlling in this litigation.

(18) The Master should have held that the complaint should be dismissed at plaintiff's costs.

Respectfully submitted,

John C. Melaniphy,
Corporation Counsel and Attorney for defendants,
511 City Hall—Chicago 2, Ill.

Dated: Feb. 8, 1956.

82 I Hereby Certify that I served the within Objections to Master's Report herein upon counsel for the plaintiff by placing a copy thereof in an envelope addressed to Felix J. Bilgrey, c/o Bilgrey & Levinson, New York, N. Y. by depositing the same in the United States mail box located in the City Hall, Chicago, Illinois this 8th day of February, A. D. 1956, and by serving a copy by messenger upon Attorney Abner J. Mikva, 231 S. La Salle Street, Chicago, Illinois, this 8th day of February, A. D. 1956.

John C. Melaniphy.

---

83 And afterwards, to wit, on the 27th day of February, 1956, being one of the days of the regular February term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable J. Sam Perry, District Judge, appears the following entry, to wit:

84 In the United States District Court.
* * (Caption—55-C-1006) * *

This cause coming on for hearing on the objections to Master's Report come the parties by their counsel, the arguments of counsel are heard and it is

Ordered that this cause be and the same hereby is continued to February 29, 1956 at 1:30 P. M.

85 And afterwards on, to wit, the 29th day of February, 1956 there was filed in the Clerk's office of said Court a certain Instruction To The Jury in words and figures following, to wit:

86 You are hereby instructed to return a verdict and make a finding as to whether the film entitled "The Game of Love" is obscene or is not obscene.

Two forms of verdict are furnished to you.

A unanimous verdict is not required.

Each member of the jury is at liberty to sign whichever of the two forms of verdict he or she deems proper under all the facts and circumstances.

87 And on the same day, to wit, the 29th day of February, 1956 there were filed in the Clerk's office of said Court two certain Verdicts in words and figures following, to wit:

88 UNITED STATES DISTRICT COURT.

(Caption—55-C-1006)

VERDICT.

We, the undersigned jurors, having been directed by the Court to view the film and hear the sound transcription simultaneously of the movie called "The Game of Love", and having done so, we hereby find the same to be an obscene picture and unfit for public showing.

Raymond Hansen,
Genevieve Kenny,
Lillian B. Anderson,
Martha A. Zink,
John J. Cooney,
Robert A. Vann,
Joseph K. Parz,
Thelma Sundstrom,
Alice S. Roeske,
Mabel N. Mickelsen,
Eric F. Ekman.

89 UNITED STATES DISTRICT COURT.
(Caption—55-C-1006)

VERDICT.

We, the undersigned jurors, having been directed by the Court to view the film and hear the sound transcription simultaneously of the movie called "The Game of Love", and having done so, we do hereby find that the same is not an obscene picture and is fit for public showing.

Stanley Talbert.

90 And afterwards on, to wit, the 21st day of March, 1956 there was filed in the Clerk's office of said Court a certain Memorandum Of The Court in words and figures following, to wit:

91 UNITED STATES DISTRICT COURT.
(Caption—55-C-1006)

MEMORANDUM.

This action is before the Court upon the objection of the defendants to the Master's Report.

Section 155-4 of the Municipal Code of the City of Chicago provides as follows:

> "Such permit shall be granted only after the motion picture film for which said permit is requested has been produced at the office of the commissioner of police for examination or censorship.
>
> "If a picture or series of pictures, for the showing or exhibition of which an application for a permit is made, is immoral or obscene, or portrays depravity, criminality, or lack of virtue of a class of citizens of any race, color, creed, or religion and exposes them to contempt, derision, or obloquy, or tends to produce a breach of the peace or riots, or purports to represent any hanging, lynching, or burning of a human being, it shall be the duty of the commissioner of police to refuse such permit; otherwise it shall be his duty to grant such permit.

92 "In case the commissioner of police shall refuse to grant a permit as hereinbefore provided, the applicant for the same may appeal to the mayor. Such appeal shall be presented in the same manner as the original application to the commissioner of police. The action of the mayor on any application for a permit shall be final."

The same ordinance was before the Supreme Court of Illinois in the case of *American Civil Liberties Union* v. *Chicago*, 3 Ill. 2nd 334. In that case, the court speaking through Chief Justice Schaefer, defined the term "obscene" as follows:

> "That a motion picture is obscene within the meaning of the ordinance if, when considered as a whole, its calculated purpose or dominant effect is substantially to arouse sexual desires, and if the probability of this effect is so great as to outweigh whatever artistic or other merits the film may possess. In making this determination the film must be tested with reference to its effect upon the normal, average person."

The movie in question is entitled "The Game of Love", which is an adaptation of a novel entitled, "Le Ble en Herbe" written by the French authoress Gabrielle Claudine Jouvenal under the pen name of Collette.

The film features the experience of two adolescents of approximately sixteen years of age, a boy, Philip, and a girl, Vinca. They are vacationing on the coast of France with their respective families who live in the same boarding house.

At the very outset, Vinca displays a romantic attachment for Philip who remains indifferent.

93 During the opening stages of this movie, Philip is shown canoeing off the coastal shore, when the boat overturns and he loses all of his clothes. Swimming back, he comes upon the shore in the midst of a group of convent school girls who are having a beach outing under the supervision of two nuns. Philip finds the small beret of one of the girls, covers himself in a suggestive manner, and begins to run along the beach. The girls he meets along the way home, however, tell him there is no longer any need for him to cover himself. Later, he is taken into custody by the local police for indecent exposure but released when his parents and Vinca explain the circumstances.

As the story develops, an adult woman of approximately 30 years of age, comes to the coast. Philip delivers bread to her home and she is attracted by him. It is clear from the film and its dialogue that she seduces him and that they consort with each other. The woman is shown locking herself and the boy in her sleeping quarters for the night. For several days and nights thereafter, Philip is constantly in her company at her house. The woman suddenly terminates the relationship and refers to Philip as a passing vacation "whim".

The film closes with a church scene from which it could possibly be implied that Philip and Vinca
94 will marry.

On May 6, 1955, the plaintiff applied to the defendant Police Commissioner for a permit to exhibit the film in question. On June 2, 1955, the Commissioner notified the plaintiff that the application for permit was denied on the ground that the Censorship Board had rejected the film because it was not acceptable to standards of decency, with immorality featured and dialogue unfit.

On June 6, 1955, the plaintiff appealed the decision of the Commissioner to the Mayor.

On June 20, 1955, this appeal was denied on the ground that the film was immoral and obscene. The action in the District Court of the United States followed, jurisdiction of which was based on diversity of citizenship and upon the alleged infringement by the local authorities of the plaintiff's rights under the 1st and 14th Amendments of the United States Constitution.

Pursuant to the urgent request of the plaintiffs, the Master took full and complete evidence and rendered three basic rulings: (1) the calculated purpose of the film in litigation is not substantially to arouse the sexual desires within the definition of the Supreme Court of Illinois as announced in the case of *American Civil Liberties Union v. Chicago, supra:* (2) The interest of the State in preventing the probability of the arousal of sexual desires
95 in normal persons is not a sufficiently overriding consideration to justify an ordinance authorizing prior restraint on freedom of expression; (3) The ordinance in question is unconstitutional because of vagueness and lack of standard.

The Master was right when he ruled against the exhibition of the film to persons under the age of eighteen. That, for the purpose of enforcement of the restriction, is of

little value. It is this Court's view that he did not go far enough. The Court had the opportunity to and did view the film and it finds that the local censorship authorities were warranted in finding it obscene within the recent definition of the Supreme Court of Illinois. The dominant tone of the film is sexuality. The young hero's accidental loss of wearing apparel during the course of the canoeing accident in and of itself is not startling. The fact, however, that he is depicted in the nude as he comes from the water before the French convent girls who have historically been associated with rigidity and seclusion, serves only to emphasize the hero's natural state and to focus the attention of the audience on it. The major part of the movie then dwells on his illicit relationship with an adventurous adult woman, and later with Vinca. The film appears to casually write off this unconventional behavior as a mere interlude in the maturing process of the young hero.
96 The Court is unable to detect any purpose other than an emphasis upon its sexuality.

The serious problem which confronts the Court in this action is the question whether the interest of the State in this particular area is a sufficiently overriding consideration as to justify an ordinance authorizing a prior restraint upon the freedom of expression. Specifically, does the First Amendment to the Federal Constitution allow a local authority to censor films under the statute designed to prevent the exhibition of obscene movies? The Master has answered in the negative. This Court is of the view that the First Amendment allows such limitation. The right of free speech is a political right granted by the First Amendment. It is not absolute and unlimited. In the case of *Kear* v. *Minnesota*, 283 U. S. 697, the Supreme Court of the United States said at page 716:

> "No one would question but that a government might prevent actual obstruction to its recruiting service or the publication of the sailing dates of transports or the number and location of troops. On similar grounds, the primary requirements of decency may be enforced against obscene publications. The security of the community life may be protected against incitements to acts of violence and the overthrow by force of orderly government."

It should be noted that the Court placed "the primary requirements of decency" on a parallel level with matters
97 relating to national security.

In *Chaplinsky* v. *New Hampshire*, 315 U. S. 568, the court stated, at pages 571-572:

> "Allowing the broadest scope to the language and purpose of the Fourteenth Amendment, it is well understood that the right of free speech is not absolute at all times and under all circumstances. There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem. These include the lewd and obscene, the profane, the libelous, and the insulting or 'fighting' words—those which by their very utterance inflict injury or tend to incite an immediate breach of the peace. It has been well observed that such utterances are no essential part of any exposition of ideas and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality."

This principle of law was reaffirmed in the recent case of *Joseph Burstyn, Inc.* v. *Wilson*, 343 U. S. 495, pages 502-503:

> "To hold that liberty of expression by means of motion pictures is guaranteed by the First and Fourteenth Amendments, however, is not the end of our problem. It does not follow that the Constitution requires absolute freedom to exhibit every motion picture of every kind at all times and all places. That much is evident from the series of decisions of this Court with respect to other media of communication of ideas."

The prevention of the exhibition of obscene films in the light of the foregoing judicial announcements is consistent with the constitutional guaranty of the First Amendment.

It is a proper exercise of the police power re-
98 served to the individual States. In the light of the language of the Supreme Court in the cited cases, this Court cannot agree with the suggestion of the plaintiff that the individual States and their municipalities must wait until a questionable film is shown and then resort to its remedy by way of protracted criminal proceedings.

This Court is aware of the recent decision in *Holmby Productions, Inc.* v. *Vaughn*, 350 U. S. 870, which is vigorously advanced by the plaintiff in support of its position. In the absence of a complete record, the specific ground

for the *per curiam* order of reversal is not ascertainable. In the light of the foregoing cases, which have never been overruled, and in view of the fact that the Supreme Court in the *Burstyn* case expressly reserved decision on the question as to whether the local authorities can censor and prevent the showing of obscene films, this Court refuses to assume that the Supreme Court decided so vital a question by way of a *per curiam* order.

Finally, the terms "immoral" or "obscene" are not so vague and uncertain as to render the ordinance in question unconstitutional. First, this Court agrees with the analysis and ruling of the Supreme Court of Illinois that the term "immoral" is little more than a synonym for
99 "obscene". *American Civil Liberties Union* v. *Chicago*, 3 Ill. 2d 334, 348.

The term "obscene" has been the target of constitutional attacks in criminal prosecutions under 18 USCA 1461, which proscribes, among other things, the mailing of obscene articles through the mails. These attacks have been grounded on the contention that the term in question does not lay down a definite standard of criminal liability, thereby rendering the statute unconstitutional. This contention has been overruled. (*Rosen* v. *U. S.*, 161 U. S. 29; *Tyomies Publishing Co.* v. *U. S.*, 211 F. 385; *U. S.* v. *Rebhuhn*, 109 F. 2d 512.)

If the term "obscene" so sufficiently provides a definite standard of criminal liability in the cited statute within constitutional requirements that it can support a judgment of conviction and possible commitment of the offender to a penal institution, *a fortiori* it must be equally definite and certain for purposes of licensing.

If this ordinance is to be voided for the reason that the terms "obscene" and "immoral" are too vague and indefinite, the State's police power in the area of health and morals, which has always enjoyed constitutional sanction, will be seriously invaded and reduced by the film industry, which currently presents one of the most popular and effective media of communicatior

The *Burstyn* case is distinguishable from the case at
100 bar. In that case, the Supreme Court dealt with the term "sacrilegious". It is a highly technical term in the field of theology and is open to a variety of meanings and interpretations depending upon which religious sect is consulted for a definition. The term "obscene", however, rests upon principles of basic morality. As Justice Har-

lan said in the *Roser* case, everyone "must take notice of what in this enlightened age is meant by decency, purity and chastity in social life and what must be deemed obscene, lewd and lascivious."

This Court holds that the film in question is obscene within the aforesaid definition of the Supreme Court of Illinois; that the local municipal authorities properly exercised a police power and that the ordinance is not unconstitutional.

Objections of the defendants to the Master's Report will be sustained.

Enter:

J. S. Perry,
Judge.

March 21, 1956.

101 And on the same day to wit, on the 21st day of March, 1956, being one of the days of the regular March term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable J. Sam Perry, District Judge, appears the following entry, to wit:

102 IN THE UNITED STATES DISTRICT COURT.
(Caption—55-C-1006)

This cause came on to be heard on the Master's Report and defendants' objections thereto and on the objection of the plaintiff to the impanelling of a Jury. This Court has carefully examined the pleadings and evidence, and files simultaneously herewith its memorandum.

It is, therefore, Ordered—

(1) That objection of plaintiff to the impanelling of a jury be and it is hereby sustained, and the order impanelling said jury and the verdict of said jury be and they are hereby vacated and set aside

(2) That the objections of the defendants to the Master's Report be and they are hereby sustained

(3) That defendants file appropriate findings of fact and conclusions of law and an appropriate decree in accordance with this order and memorandum of this Court on April 2, 1956 at 10:00 A. M.

(4) That plaintiff file its objections, if any, on or before April 15, 1956 and that briefs in support thereof and in opposition thereto be filed in accordance with Rule 13 of the Rules of this Court

103 And afterwards, to wit, on the 29th day of March, 1956, being one of the days of the regular March term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable J. Sam Perry, District Judge, appears the following entries, to wit:

104 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—55-C-1006) * *

It Is Ordered by the Court that leave be and hereby is granted to amend the Master's Report on its face as follows:

3rd line, page 14, change "are" to "is"
9th line, page 17, change "adults" to "Adolescents"
14th line, page 22, change "persons" to "person"

105 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—55-C-1006) * *

On its own motion, this Court, pursuant to the provisions of Rule 60(a) of Federal Rules of Civil Procedure which provides for the correction of clerical errors at any time, corrects lines 13 and 14 on page 6 of its Memorandum heretofore filed, to read as follows: "The right of free speech is a political right guaranteed by the First Amendment."

106 And afterwards, to wit, on the 27th day of April, 1956, being one of the days of the regular April term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable J. Sam Perry, District Judge, appears the following entries, to wit:

107 UNITED STATES DISTRICT COURT.
* * (Caption—55-C-1006) * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

This cause came on to be heard on the report of the Master in Chancery David J. Shipman, the defendants' objections thereto and the objections to the impaneling of a jury, and the court having carefully examined the said Master's Report, the defendants' objections thereto

and considering the plaintiff's objections to the impaneling of the jury and having carefully examined the pleadings and evidence in this cause makes the following findings of fact and conclusions of law:

Findings of Fact.

The Court finds as a matter of fact:

1. That plaintiff, Times Film Corporation is a corporation organized and existing under the laws of the State of New York.

108 2. That defendant, City of Chicago, is a Municipal Corporation organized and existing under the laws of the State of Illinois.

3. That defendant, Richard J. Daley, is the Mayor of the City of Chicago.

4. That defendant, Timothy J. O'Connor, is the Commissioner of Police of the City of Chicago.

5. That plaintiff is a citizen of the State of New York and the defendants are all citizens of the State of Illinois.

6. That the action arises under the First and Fourteenth Amendments to the Constitution of the United States.

7. That the matter in controversy exceeds the sum or value of $3,000.00 exclusive of interest and costs.

8. That all of the defendants were properly served with summons and entered their appearances herein.

9. That this Court has original jurisdiction of this action.

10. That this Court has jurisdiction of the parties.

11. That the plaintiff has the exclusive right to distribute, to license for exhibition, and to exhibit in the City of Chicago a certain photoplay or motion picture film entitled "The Game of Love" a print of which picture was attached to the complaint as Exhibit 1.

12. That said motion picture, herein sometimes referred to as the film, is an adaptation of a novel entitled "Le Ble en Herbe" written by the French authoress Gabrielle Claudine Jourvernal under the pen name of Colette.

109 13. That at all times relevant to this action, the Ordinance of the City of Chicago attached to the complaint as Exhibit B was in full force and effect.

14. That on or about May 6, 1955, plaintiff applied

to defendant Police Commissioner O'Connor for a permit to exhibit the film in the City of Chicago.

15. That on June 2, 1955 defendant Police Commissioner Timothy J. O'Connor, on the recommendation of the Censor Board refused to issue a permit to the plaintiff for the exhibition of the film in the City of Chicago upon the ground that the film was obscene.

16. That on June 6, 1955 plaintiff appealed the decision of defendant Police Commissioner O'Connor to defendant Mayor Daley.

17. That on June 20, 1955 defendant Mayor Daley denied the appeal of the plaintiff and based his denial on the ground that the film was immoral and obscene.

18. That as a result the plaintiff was refused a permit to exhibit the film "The Game of Love" in the city of Chicago.

19. That except for the purpose of evidence in this case, the plaintiff has not publicly exhibited the film in the city of Chicago.

20. That the Court has viewed the said film "The Game of Love" in evidence as defendants' Exhibit 1.

That the film substantially features the experiences of two adolescents of approximately sixteen years of age, a boy, Philip, and a girl, Vinca. They are vacationing 110 on the coast of France with their respective families who live in the same boarding house. At the very outset, Vinca displays a romantic attachment for Philip who remains indifferent.

During the opening stages of this movie, Philip is shown canoeing off the coastal shore, when the boat overturns and he loses all of his clothes. Swimming back, he comes upon the shore in the midst of a group of convent school girls who are having a beach outing under the supervision of two nuns. Philip finds the small beret of one of the girls, covers himself in a suggestive manner, and begins to run along the beach. The girls he meets along the way home, however, tell him there is no longer any need for him to cover himself. Later, he is taken into custody by the local police for indecent exposure but released when his parents and Vinca explain the circumstances.

As the story develops, an adult woman of approximately 30 years of age, comes to the coast. Philip delivers bread to her home and she is attracted by him. It is clear from

the film and its dialogue that she seduces him and that they consort with each other. The woman is shown locking herself and the boy in her sleeping quarters for the night. For several days and nights thereafter, Philip is constantly in her company at her home. The woman suddenly terminates the relationship and refers to Philip as a passing vacation "whim".

The film closes with a church scene from which it could possibly be implied that Philip and Vinca will marry.

111 21. That the calculated purpose of the film as a whole is substantially to arouse sexual desires and this outweighs any other merit possessed by the film.

22. That the film herein involved "The Game of Love" is obscene and immoral.

Conclusions of Law.

The Court concludes as a matter of law:

1. That the objection of plaintiff to the impaneling of a jury is sustained and the order impaneling said jury and the verdict of said jury is vacated and set aside.

2. That Sections 155-1 through 155.7 of the Municipal Code of Chicago are not violative of the First and Fourteenth Amendments to the Constitution of the United States.

3. That the denial of a license or permit by the defendants to the plaintiff, under said ordinance, to exhibit said film "The Game of Love" in the city of Chicago did not violate or deny plaintiff any right under the First and Fourteenth Amendments to the Constitution of the United States.

4. That the said denial of a license or permit was a valid and lawful exercise of the police power of City of Chicago.

5. That said license or permit applied for by plaintiff was properly and lawfully denied by defendants.

6. That the objections of the defendants to the Report of Master in Chancery, David J. Shipman, are valid and are sustained.

112 7. That the relief prayed by plaintiff in its complaint is denied and its suit herein is dismissed at its costs.

8. That the fees and costs of Master in Chancery David J. Shipman are reasonable and proper.

9. That the Master's Certificate of Costs be approved and that the Master's fees and costs be taxed against the plaintiff.

Dated: April 27, 1956.

Enter:
J. S. Perry,
Judge.

113 Certificate.

I hereby certify that I served the within Findings of Fact and Conclusions of Law upon counsel for plaintiff and the Master in Chancery in said cause by placing a copy thereof in an envelope addressed to each of the following (with proper postage thereon):

Mr. Felix Bilgrey,
c/o Bilgrey & Levinson,
144 West 57th Street,
New York 19, New York.

Mr. Abner J. Mikva,
Goldberg, Devoe, Brussell & Shadur,
231 South La Salle Street,
Chicago 4, Illinois.

Mr. David J. Shipman,
135 South La Salle Street,
Chicago, Illinois.

and depositing the same in the United States mail box located in the City Hall, Chicago, Illinois, this 2nd day of April, 1956.

E. R. Hartigan,
Assistant Corporation Counsel.

114 UNITED STATES DISTRICT COURT.
* * (Caption—55-C-1006) * *

DECREE.

This cause coming on to be heard upon the Report of Master in Chancery David J. Shipman, the defendants' Objections thereto, the Objections of the Plaintiff to the impaneling of a jury, the pleadings, briefs of counsel and the evidence in said cause, and the Court having considered said Master's Report, Defendants' Objections thereto, the Objections of Plaintiff to the impaneling of a jury, and having examined the pleadings, evidence and briefs of counsel, finds:

1. That it has jurisdiction of the parties hereto and the subject matter thereof.

2. That plaintiff Times Film Corporation is a corporation organized and existing under the laws of the State of New York.

3. That the defendant City of Chicago is a mu-
115 nicipal corporation organized and existing under the laws of the State of Illinois.

4. That defendant, Richard J. Daley is Mayor of the City of Chicago.

5. That the defendant Timothy J. O'Connor is the Commissioner of Police of the City of Chicago.

6. That plaintiff is a citizen of the State of New York and the defendants are all citizens of the State of Illinois.

7. That the action herein arises under the First and Fourteenth Amendments to the Constitution of the United States.

8. That plaintiff has the exclusive right to distribute, license for exhibition and to exhibit in the city of Chicago the motion picture here involved entitled "The Game of Love".

9. That the ordinance of the City of Chicago attached to the plaintiff's complaint as Exhibit B was in full force and effect in the months of May and June, 1955 and is still in force and effect.

10. That on or about May 6, 1955 plaintiff applied to

the defendant Police Commissioner Timothy J. O'Connor for a permit to exhibit said film in the city of Chicago.

11. That on June 2, 1955 defendant Police Commissioner Timothy J. O'Connor, on the recommendation of the Censor Board refused to issue a permit to the plaintiff for the exhibition of the film in the city of Chicago upon the ground that the film was obscene.

116 12. That on June 6, 1955 plaintiff appealed the decision of defendant Police Commissioner Timothy J. O'Connor to defendant Mayor Daley.

13. That on June 13, 1955 defendant Mayor Richard J. Daley denied the appeal of the plaintiff and based his denial on the ground that the film was immoral and obscene.

14. That plaintiff was refused a permit to exhibit said film in the city of Chicago.

15. The Court Further Finds, having viewed said film in evidence as Defendants' Exhibit 1, that said film is obscene and immoral.

16. The Court Further Finds that the ordinance of the City of Chicago referred to in the plaintiff's complaint as Exhibit B is not violative of the First and Fourteenth Amendments to the Constitution of the United States, and is valid constitutionally.

17. That the denial of a license or permit by the defendants to the plaintiff under said ordinance, to exhibit said film "The Game of Love" in the city of Chicago did not violate or deny plaintiff of any right under the First and Fourteenth Amendments to the Constitution of the United States.

18. That the said denial of a license or permit was a valid and lawful exercise of the police power vested in the defendant City of Chicago and that said license or permit to the plaintiff was lawfully and properly denied.

19. That the fees and costs of Master in Chancery David J. Shipman are reasonable and proper.

117 It is, therefore, Ordered, Adjudged And Decreed that the objections of the defendants to the Report of Master in Chancery David J. Shipman are valid and are hereby sustained; that the objections of the plaintiff to the impaneling of the jury are sustained and the order impaneling said jury and the verdict of the jury is vacated and set aside, and the fees and costs of David J. Shipman, Master in Chancery herein, are allowed and

taxed against the plaintiff. It is further Ordered, Adjudged And Decreed that the relief prayed for by the plaintiff in its complaint is hereby denied and its suit herein is hereby dismissed at the plaintiff's costs.

Enter:

J. S. Perry,
Judge.

Dated: April 27, 1956.

118 Certificate.

I hereby certify that I served the within Decree upon counsel for plaintiff and the Master in Chancery in said cause by placing a copy thereof in an envelope addressed to each of the following (with proper postage thereon):

Mr. Felix Bilgrey,
c/o Bilgrey & Levinson,
144 West 57th Street,
New York 19, New York.

Mr. Abner J. Mikva,
Goldberg, Devoe, Brussell & Shadur,
231 South La Salle Street,
Chicago 4, Illinois.

Mr. David J. Shipman,
135 South La Salle Street,
Chicago, Illinois.

and depositing the same in the United States mail box located in the City Hall, Chicago, Illinois, this 2nd day of April, 1956.

E. R. Hartigan,
Assistant Corporation Counsel.

119 And afterwards on, to wit, the 4th day of May, 1956 came the Plaintiff, Times Film Corporation by its attorneys and filed in the Clerk's office of said Court its certain Notice Of Appeal (Clerk's Certificate Of Mailing Attached Thereto) in words and figures following, to wit:

120 IN THE UNITED STATES DISTRICT COURT.

Northern District of Illinois,

Eastern Division.

Times Film Corporation, a New York corporation, *Plaintiff*, *vs.* City of Chicago, a Municipal corporation, Richard J. Daley and Timothy J. O'Connor, *Defendants.*	Civil Action No. 55 C 1006

NOTICE OF APPEAL.

Notice is hereby given that Times Film Corporation, Plaintiff above named, hereby appeals to the United States Court of Appeals for the Seventh Circuit from the order sustaining the defendants' objections to the Master's report and the dismissal of Plaintiff's suit in the above entitled action, entered in this action on April 27, 1956.

Abner J. Mikva,
Attorney for Plaintiff Appellant,
231 So. La Salle Street.

Attorney for Defendants, Appellees.
John J. Melaniphy,
Corporation Counsel, City of Chicago,
511 City Hall,
Chicago 2, Illinois.

121 United States of America, }
Northern District of Illinois. } ss.

• • (Caption—55-C-1006) • •

CERTIFICATE OF MAILING.

I, Roy H. Johnson, Clerk of the United States District Court for the Northern District of Illinois, do hereby certify that on May 4, 1956, in accordance with Rule 73(b) of the Federal Rules of Civil Procedure, a copy of the foregoing Notice of Appeal was mailed to:

John C. Melaniphy,
Acting Corporation Counsel,
511 City Hall,
Chicago, Illinois.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 4th day of May, 1956.

Roy H. Johnson,
Clerk,
By Beverly V. Peters,
Deputy Clerk.

(Seal)

122 And on the same day, to wit, the 14th day of May, 1956, came the Appellant by its attorneys and filed in the Clerk's office of said Court its certain Statement Of Points and Designation of Contents of Record On Appeal in words and figures following, to wit:

123 In the United States District Court.

• • (Caption—55-C-1006) • •

APPELLANT'S STATEMENT OF POINTS.

Appellant, Times Film Corporation, Plaintiff herein, upon their appeal to the United States District Court of Appeal for the Seventh Circuit from a certain order entered in the Cause on April 27th, 1956 intends to rely upon the following points:

1. The District Court erred in making and entering the order appealed from date April 27, 1956.
2. The District Court erred in making and entering the memorandum and order dated March 21st, 1956.
3. The orders appealed from were not authorized, justified or warranted by law or by the record from the Court.
4. The District Court erred in overruling the Master's findings of fact and conclusions of law.
5. The District Court erred in overruling the Master's recommendations and in refusing to issue an injunction from restraining defendants from interfering with the public exhibition of the motion picture "The Game of Love."
6. The District Court erred in refusing to declare Sections 155-1 to 155-7 of the Municipal Code of the City of Chicago unconstitutional under the 1st and 14th Amendments to the United States Constitution.

124 7. The District Court erred in refusing to find that the City Censorship Authority failed to apply the standards required of time in denying the application of the plaintiff for a permit.

Abner J. Mikva,
Attorney for Plaintiff-Appellant.
231 South La Salle Street,
Chicago 4, Illinois,
ANdover 3-3700.

State of Illinois, }
County of Cook. } ss.

Abner J. Mikva, being first duly sworn, deposes and says that he served a copy of the foregoing Statement of Points on John J. Melaniphy, attorney for defendants in the above entitled Cause, by delivering same to his office on May 14, 1956.

Abner J. Mikva.

Subscribed and sworn to before me this 14th day of May 14, 1956.

Seymour I. Regal,
Notary Public.

(Seal)

125 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—55-C-1006) * *

APPELLANT'S DESIGNATION OF CONTENTS OF RECORD ON APPEAL.

Appellant, Times Film Corporation, Plaintiff herein, hereby designates the following portion of the record and proceedings to be contained in the record on its appeal to the United States Court of Appeals for the Seventh Circuit from the order entered on April 27, 1956:

1. Complaint filed by Times Film Corporation on July 7, 1955.
2. Security for costs filed by Plaintiff—1955.
3. Appearance of John J. Melaniphy, Corporation Counsel, for the City of Chicago, Richard J. Daley and Timothy J. O'Connor.
4. Answer of Defendants, filed July 25, 1955.
5. Plaintiff's motion and affidavit to have trial set for date certain, filed December 12, 1955.
6. Order dated September 12, 1955, referring cause to Master David J. Shipman.
7. Order dated October 3, 1955 amending the order of reference to Master Shipman.
8. Order filed November 15, 1955 requiring Plaintiff to post additional bond of $4,750.00.

126 9. Additional security for costs filed by Plaintiff November 28, 1955.

10. Master's report filed January 31, 1956.
11. Plaintiff's exhibits 1 through 30 and Defendant's exhibit 1, filed by Master David J. Shipman on January 31, 1956.
12. The pages listed below from the transcript of testimony, Volumes 1 and 2, of evidence taken before Master Shipman and filed January 31, 1956:

49 through 54
61 through 66
99 through 126
129 through 168
176 through 220
227 through 236
239 through 333
337 through 437

440 through 516
518 through 636
640 through 659
666 through 668

13. Master's certificate of costs filed January 30, 1956.
14. Defendant's objections to Master's Report, filed February 8, 1956.
15. Order filed February 27, 1956 stating that hearing was held on objections and cause continued to February 29, 1956.
16. Instructions to jury filed February 29, 1956.
17. Verdicts of jury filed February 29, 1956.
18. Memorandum and order of Judge Perry, filed March 21, 1956.
19. Findings of fact and conclusions of law, filed April 27, 1956.
20. Order of Judge Perry sustaining Defendant's motion of objections to Master's Report and dismissing complaint, filed April 27, 1956.
21. Notice of appeal of Times Film Corporation and proof of service thereof.
22. Appeal bond of Times Film Corporation.
127 23. Statement of Points of Times Film Corporation and proof of service thereof.
24. This designation of record.

Abner J. Mikva,
Attorney for Plaintiff-Appellant,
231 South La Salle Street,
Chicago 4, Illinois,
AN 3-3700.

State of Illinois, }
County of Cook. } ss.

Abner J. Mikva, being first duly sworn, deposes and says that he served a copy of the foregoing Designation of Record on John J. Melaniphy, attorney for Defendants in the above entitled cause, by delivering same to his office on May 14, 1956.

Abner J. Mikva.

Subscribed and sworn to before me this 14th day of May, 1956.

(Seal)

Seymour I. Regal,
Notary Public.

128 And afterwards on, to wit, the 14th day of May, 1956 there was filed in the Clerk's office of said Court a certain COST BOND ON APPEAL in words and figures following, to wit:

129 Know all Men by these Presents:

That we, Times Film Corporation, a New York Corporation, as principal, and United States Fidelity and Guaranty Company, as sureties, are held and firmly bound unto City of Chicago, a Municipal Corporation, Richard J. Daley and Timothy J. O'Connor in the full and just sum of Two hundred and fifty and 00/100 ($250.00) to be paid to the said City of Chicago, a Municipal Corporation, Richard J. Daley and Timothy J. O'Connor, attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated this 14th day of May in the year of our Lord one thousand nine hundred and fifty-six.

Whereas, lately at a session of the United States District Court for the Northern District of Illinois, Eastern Division, in a suit pending in said Court between Times Film Corporation, a New York Corporation, and City of Chicago, a Municipal Corporation, Richard J. Daley and Timothy J. O'Connor a decree was rendered against plaintiff and the said plaintiff having filed in the Clerk's Office of the said District Court Notice of Appeal to the United States Court of Appeals for the Seventh Circuit, to reverse the decree of the aforesaid suit, in the United States Court of Appeals for the Seventh Circuit, to be holden at Chicago within forty (40) days from the date hereof.

Now, the condition of the above obligation is such, that if the said principal shall pay the costs if the appeal is dismissed or the decree affirmed, or pay such costs as the appellate court may award if the decree is modified then the above obligation to be void; otherwise to remain in full force and virtue.

United States Fidelity and Guaranty Company,
By T. R. Solomon,
Attorney in Fact.

(Seal)

130 And afterwards, to wit, on the 31st day of March, 1956, being one of the days of the regular March term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable J. Sam Perry, District Judge, appears the following entry, to wit:

131 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—55-C-1006) * *

ORDER.

1. It appearing to the Court from the nature and character of the Exhibits of the plaintiff in this cause, that the originals of said Exhibits should be transmitted to the United States Court of Appeals for the Seventh Circuit as a part of the record on appeal herein, it is ordered that the Clerk of the above entitled Court be and he is hereby authorized and directed to withdraw from the files in his office and to transmit to the Clerk of said Appellate Court with and as a part of the record on appeal in said cause all said original Exhibits, and said original Exhibits need not be copied in the said record on appeal.

2. It appearing to the Court that certain portions of the copy of the transcript of testimony taken before the Master in Chancery in the above entitled cause be certified without comparison to the original of said transcript
132 on file with the Court, and should be transmitted to the United States Court of Appeals for the Seventh Circuit as a part of the record on appeal herein.

J. S. Perry,
U. S. District Judge.

Date May 31, 1956.

133 United States of America,
Northern District of Illinois. } ss.

I, Roy H. Johnson, Clerk of the United States District Court for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record made in accordance with the Appellant's Designation Of Contents Of Record On Appeal filed in this Court in the cause entitled: Times Film Corporation, a New York corporation, Plaintiff, *vs.* City of Chicago, a municipal corporation, Richard J. Daley and Timothy J. O'Connor, Defendants, No. 55 C 1006, as the same appear from the original records and files thereof now remaining among the records of the said Court in my office, except the exhibits which are incorporated herein originally by direction of this Court. Portions of the Transcript of Proceedings as certified by the Official Court Reporter are certified by the Clerk as part of this record without comparison with the original of said transcript on file with the Court, pursuant to an order of this Court.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 7th day of June, 1955.

Roy H. Johnson,
Clerk.

(Seal)

By Gizella Butcher,
Deputy Clerk.

overturns and he loses all of his clothes. Swimming back, he comes upon the shore in the midst of a group of convent school girls who are having a beach outing under the supervision of two nuns. Philip finds the small beret of one of the girls, covers himself in a suggestive manner, and begins to run along the beach. The girls he meets along the way home, however, tell him there is no longer any need for him to cover himself. Later, he is taken into custody by the local police for indecent exposure but released when his parents and Vinca explain the circumstances.

As the story develops, an adult woman of approximately 30 years of age, comes to the coast. Philip delivers bread to her home and she is attracted by him. It is clear from the film and its dialogue that she seduces him and that they consort with each other. The woman is shown locking herself and the boy in her sleeping quarters for the night. For several days and nights thereafter, Philip is constantly in her company at her home. The woman suddenly terminates the relationship and refers to Philip as a passing vacation "whim".

The film closes with a church scene from which it could possibly be implied that Philip and Vinca will marry.

21. That the calculated purpose of the film as a whole is substantially to arouse sexual desires and this outweighs any other merit possessed by the film.

22. That the film herein involved "The Game of Love" is obscene and immoral.

Appendix B

Findings of Fact and Conclusions of Law

Conclusions of Law

The Court concludes as a matter of law:

1. That the objection of plaintiff to the impaneling of a jury is sustained and the order impaneling said jury and the verdict of said jury is vacated and set aside.

2. That Sections 155-1 through 155.7 of the Municipal Code of Chicago are not violative of the First and Fourteenth Amendments to the Constitution of the United States.

3. That the denial of a license or permit by the defendants to the plaintiff, under said ordinance, to exhibit said film "The Game of Love" in the city of Chicago did not violate or deny plaintiff any right under the First and Fourteenth Amendments to the Constitution of the United States.

4. That the said denial of a license or permit was a valid and lawful exercise of the police power of City of Chicago.

5. That said license or permit applied for by plaintiff was properly and lawfully denied by defendants.

6. That the objections of the defendants to the Report of Master in Chancery, David J. Shipman, are valid and are sustained.

7. That the relief prayed by plaintiff in its com-

plaint is denied and its suit herein is dismissed at its costs.

8. That the fees and costs of Master in Chancery David J. Shipman are reasonable and proper.

9. That the Master's Certificate of Costs be approved and that the Master's fees and costs be taxed against the plaintiff.

Dated: April 27, 1956.

Enter:

J. S. Perry,
Judge.

Appendix B

Decree

UNITED STATES DISTRICT COURT

* * (Caption—55-C-1006) * *

This cause coming on to be heard upon the Report of Master in Chancery David J. Shipman, the defendants' Objections thereto, the Objections of the Plaintiff to the impaneling of a jury, the pleadings, briefs of counsel and the evidence in said cause, and the Court having considered said Master's Report, Defendants' Objections thereto, the Objections of Plaintiff to the impaneling of a jury, and having examined the pleadings, evidence and briefs of counsel, finds:

1. That it has jurisdiction of the parties hereto and the subject matter thereof.

2. That plaintiff Times Film Corporation is a corporation organized and existing under the laws of the State of New York.

3. That the defendant City of Chicago is a municipal corporation organized and existing under the laws of the State of Illinois.

4. That defendant Richard J. Daley is Mayor of the City of Chicago.

5. That the defendant Timothy J. O'Connor is the Commissioner of Police of the City of Chicago.

Appendix B.

Decree

6. That plaintiff is a citizen of the State of New York and the defendants are all citizens of the State of Illinois.

7. That the action herein arises under the First and Fourteenth Amendments to the Constitution of the United States.

8. That plaintiff has the exclusive right to distribute, license for exhibition and to exhibit in the city of Chicago the motion picture here involved entitled "The Game of Love".

9. That the ordinance of the City of Chicago attached to the plaintiff's complaint as Exhibit B was in full force and effect in the months of May and June, 1955 and is still in force and effect.

10. That on or about May 6, 1955 plaintiff applied to the defendant Police Commissioner Timothy J. O'Connor for a permit to exhibit said film in the city of Chicago.

11. That on June 2, 1955 defendant Police Commissioner Timothy J. O'Connor, on the recommendation of the Censor Board refused to issue a permit to the plaintiff for the exhibition of the film in the city of Chicago upon the ground that the film was obscene.

12. That on June 6, 1955 plaintiff appealed the decision of defendant Police Commissioner Timothy J. O'Connor to defendant Mayor Daley.

Appendix B

Decree

13. That on June 13, 1955 defendant Mayor Richard J. Daley denied the appeal of the plaintiff and based his denial on the ground that the film was immoral and obscene.

14. That plaintiff was refused a permit to exhibit said film in the city of Chicago.

15. The Court Further Finds, having viewed said film in evidence as Defendants' Exhibit 1, that said film is obscene and immoral.

16. The Court Further Finds that the ordinance of the City of Chicago referred to in the plaintiff's complaint as Exhibit B is not violative of the First and Fourteenth Amendments to the Constitution of the United States, and is valid constitutionally.

17. That the denial of a license or permit by the defendants to the plaintiff under said ordinance, to exhibit said film "The Game of Love" in the City of Chicago did not violate or deny plaintiff of any right under the First and Fourteenth Amendments to the Constitution of the United States.

18. That the said denial of a license or permit was a valid and lawful exercise of the police power vested in the defendant City of Chicago and that said license or permit to the plaintiff was lawfully and properly denied.

19. That the fees and costs of Master in Chancery David J. Shipman are reasonable and proper.

Appendix B

Decree

It is, therefore, Ordered, Adjudged And Decreed that the objections of the defendants to the Report of Master in Chancery David J. Shipman are valid and are hereby sustained; that the objections of the plaintiff to the impaneling of the jury are sustained and the order impaneling said jury and the verdict of the jury is vacated and set aside, and the fees and costs of David J. Shipman, Master in Chancery herein, are allowed and taxed against the plaintiff. It is further Ordered, Adjudged And Decreed that the relief prayed for by the plaintiff in its compla. t is hereby denied and its suit herein is hereby dismissed at the plaintiff's costs.

Enter:

J. S. Perry,
Judge.

Dated: April 27, 1956.

APPENDIX C

Opinion of Court of Appeals, Seventh Circuit

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

No. 11776 SEPTEMBER TERM, 1956 APRIL SESSION, 1957.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

TIMES FILM CORPORATION, a New York corporation,
Plaintiff-Appellant,

v.

CITY OF CHICAGO, a municipal corporation, RICHARD J. DALEY, its mayor, and TIMOTHY J. O'CONNOR, its commissioner of police,
Defendants-Appellees.

May 21, 1957

Before LINDLEY, SWAIM and SCHNACKENBERG, *Circuit Judges.*

SCHNACKENBERG, Circuit Judge. Plaintiff, a New York corporation, filed its complaint in the district court, on the ground of diversity of citizenship between it and the defendants, city of Chicago, its mayor, and its commissioner of police.

In count I, it alleges that it had the exclusive right to exhibit in said city a motion picture film entitled

"The Game of Love", and that, pursuant to sections 155-1 to 155-7 of the municipal code of the city, it applied to defendant O'Connor for a permit to exhibit the film, but that he declined to do so because "it is not acceptable to standards of decency, with immorality featured and dialogue unfit". It further alleges that its appeal from said decision to defendant Daley was denied and a permit was refused. It is charged that O'Connor and Daley had a duty to grant the permit since the film does not come within the description of films for which said defendants have the duty to refuse permits and that their actions in denying the permit are unlawful and void in that they far exceed the discretion vested in them by said ordinance.

Count II charges that the denial of the permit was an infringement of plaintiff's constitutional rights to freedom of speech and the press and to engage in lawful business activities in said city.

In count III plaintiff charges that said municipal ordinance violates on its face the first and fourteenth amendments to the constitution of the United States and unlawfully abridges the rights protected therein.

Attached to the complaint is a film of said motion picture, as well as a copy of the ordinance.

The ordinance, in its relevant parts, makes it unlawful for a person to put into circulation any motion picture film for exhibition within the city, without first securing a permit therefor from the commissioner of police. It provides a penalty for a violation of the ordinance. It also provides that before any such permit is granted, an application therefor shall be made and a film of the picture shall be shown to

the commissioner, who shall inspect it, or cause it to be inspected, whereupon he shall grant or deny a permit. In addition, section 155-4 provides, *inter alia*, "if a picture * * * is immoral or obscene, * * * it shall be the duty of the commissioner of police to refuse such permit; * * *. In case the commissioner of police shall refuse to grant a permit as hereinbefore provided, the applicant for the same may appeal to the mayor. * * * [whose action] shall be final."[1]

The answer of defendants, seeking to justify the refusal of a permit to plaintiff, averred that the film was violative of section 155-4 "in that it is immoral and obscene * * *."

A master in chancery to whom the district court referred this case, received and reported to the court the testimony of various witnesses and his conclusions and recommendations.

The district court considered that report,[2] viewed the film, and found that it is obscene and immoral, that the ordinance is not violative of the first and

---

[1] Section 155-5 provides, *inter alia*, "In all cases where a permit for the exhibition of a picture or series of pictures has been refused under the provisions of the preceding section because the same tends towards creating a harmful impression on the minds of children, where such tendency as to the minds of adults would not exist if exhibited only to persons of mature age, the commissioner of police may grant a special permit limiting the exhibitions of such picture or series of pictures to persons over the age of twenty-one years; * * *."

[2] It is undisputed that the commissioner of police personally viewed the film and that the persons to whom he referred it viewed it twice, once before they originally disapproved it and again after an appeal to the mayor had been taken. The second view was taken at the mayor's request and their second disapproval was reported to him. He then rejected the application for a permit.

fourteenth amendments to the constitution of the United States, and that the denial of a permit did not violate any right of plaintiff under said amendments. It dismissed the complaint. From that decree plaintiff appealed.

1. Expression by means of motion pictures is included within the free speech and free press guaranty of the first and fourteenth amendments. See *Joseph Burstyn, Inc.* v. *Wilson,* 343 U. S. 495, where the court said, at 502:

> "It does not follow that the Constitution requires absolute freedom to exhibit every motion picture of every kind at all times and all places. That much is evident from the series of decisions of this Court with respect to other media of communication of ideas. Nor does it follow that motion pictures are necessarily subject to the precise rules governing any other particular method of expression. Each method tends to present its own peculiar problems. But the basic principles of freedom of speech and the press, like the First Amendment's command, do not vary. Those principles, as they have frequently been enunciated by this Court, make freedom of expression the rule. * * *"

In that case, at 506, the court disclaimed any intention to decide "whether a state may censor motion pictures under a clearly drawn statute designed and applied to prevent the showing of obscene films." It held only that, under said amendments, a state may not ban a

film on the basis of a censor's conclusion that it is "sacrilegious."

In an earlier case, it held that the primary requirements of decency may be enforced against obscene publications. *Near* v. *Minnesota*, 283 U. S. 697, 716.

In *Chaplinsky* v. *New Hampshire*, 315 U. S. 568, at 571, the court said:

> "Allowing the broadest scope to the language and purpose of the Fourteenth Amendment, it is well understood that the right of free speech is not absolute at all times and under all circumstances. There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem. These include the lewd and obscene, * * *."

We hold that the public exhibition of obscene moving pictures may be barred by proceedings under a proper statute or ordinance enacted pursuant to the authority of a state, and that the rights of the exhibitor of such a picture under the first and fourteenth amendments of the constitution of the United States are not thereby violated.

2. Such a legislative enactment must be clear as to its scope and meaning. In determining the meaning thereof we are required to consider the words used in the enactment and any interpretation thereof made by the highest court of the state. *Minnesota* v. *Probate Court*, 309 U. S. 270, 273.

Office Supreme Court, U.S.
FILED
AUG 13 1957
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 372

TIMES FILM CORPORATION,

Petitioner,

v.

CITY OF CHICAGO, RICHARD J. DALEY and TIMOTHY J. O'CONNOR,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

FELIX J. BILGREY
144 West 57th Street
New York 19, New York

ABNER J. MIKVA
231 South LaSalle Street
Chicago 4, Illinois

Counsel for Petitioner

THE COURT PRESS, 130 Cedar Street, N. Y. C.

INDEX

	PAGE
Citations to Opinions Below	1
Jurisdiction	2
Questions Presented	2
Statutory Provisions	3
Statement	3
Reasons for Granting the Writ	5
Conclusion	12
Appendix A—Master's Report	1a
Appendix B:	
Verdict	31a
Memorandum	31a
Decree	49a
Appendix C—Opinion of Court of Appeals, Seventh Circuit	53a
Appendix D—Municipal Code of the City of Chicago, Chapter 155, Sections 1-7	62a
Appendix E—Amendments 1 and 14 of the Constitution of the United States	67a

TABLE OF CASES CITED

Alberts v. *California*, 25 Law Week 50, p. 4539	10
American Civil Liberties Union v. *Chicago*, 3 Ill. 2d 334, 121 N. E. 2d 585 (1954), appeal denied 348 U. S. 979 (1955), 13 Ill. App. 2d 278 (1957), 141 N. E. 2d 56 (1957)	8, 9, 10, 11

PAGE

Burstyn v. *Wilson*, 343 U. S. 495 (1952) ... 5, 7, 8, 10

Commercial Pictures v. *Board of Regents*, 346 U. S. 587 (1954) ... 7

Cox v. *New Hampshire*, 312 U. S. 569 ... 7

Gelling v. *Texas*, 343 U. S. 960 (1952) ... 7

Hannegan v. *Esquire*, 327 U. S. 146 ... 11

Holmby Productions, Inc. v. *Vaughn*, 350 U. S. 870 (1955) ... 5, 7

Kingsley Books, Inc. v. *Brown*, 25 Law Week 50, page 4257 (1957) ... 6

Kovacs v. *Cooper*, 336 U. S. 77 (1949) ... 7

Near v. *Minnesota*, 283 U. S. 697 (1931) ... 6

Superior Films, Inc. v. *Dept. of Education*, 346 U. S. 587 (1954) ... 7

Other Authorities Cited

Constitution of the United States:

First Amendment ... 2, 3, 5, 6

Fourteenth Amendment ... 2, 3, 5, 6

Municipal Code of the City of Chicago, Chapter 155, Sections 1-7 ... 3, 4

28 U. S. C.:

Section 1254(1) ... 2

Section 1331 ... 5

Section 1332 ... 5

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No.

TIMES FILM CORPORATION,

Petitioner,

v.

CITY OF CHICAGO, RICHARD J. DALEY and TIMOTHY J. O'CONNOR,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Comes now the Petitioner, Times Film Corporation, and prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit, entered in the above-entitled case on May 21, 1957.

Citations to Opinions Below

The Master's Report is unreported, appears in the Transcript of Record at pp. 267-286 and is attached hereto as Appendix A. The opinion of the United

States District Court for the Northern District of Illinois, Eastern Division, is reported in 139 F. Supp. 837, appears in the Transcript of Record at pp. 289-305, and is attached hereto as Appendix B. The opinion of the United States Court of Appeals for the Seventh Circuit is reported in 244 F. 2d 432, and is attached hereto as Appendix C.

Jurisdiction

The judgment of the United States Court of Appeals for the Seventh Circuit was entered May 21, 1957.

The jurisdiction of this Court is invoked under 28 U. S. C. Section 1254(1).

Questions Presented

1. Are the provisions of the Chicago ordinance, providing for censorship of all motion pictures prior to their exhibition, and prohibiting the exhibition of all motion pictures which are "immoral and obscene", unconstitutional as an infringement of rights guaranteed by the First and Fourteenth Amendments?

2. Is the application of the Chicago ordinance so as to ban the exhibition of the motion picture entitled "The Game of Love" a violation of rights protected under the First and Fourteenth Amendments?

Statutory Provisions

The statutory provisions involved are Sections 1-7 of Chapter 155 of the Municipal Code of the City of Chicago; and the First and Fourteenth Amendments of the United States Constitution. They are printed in Appendices D and E, *infra*, pp. 61a to 67a.

Statement

As the complaint indicates (Transcript of Record, pp. 4-7) Petitioner, Times Film Corporation, has the exclusive right to distribute, to license for public exhibition and to exhibit in the City of Chicago, the motion picture entitled "The Game of Love", a film produced in France based on a novel by Colette, in the French language with superimposed English subtitles.

Petitioner applied for a permit to publicly exhibit "The Game of Love", as required under Sections 155-1 to 155-7 of the Municipal Code of Chicago, pursuant to which Respondents purport to act. On May 6, 1955, the Police Censor Board, which has been designated by the Commissioner of Police to act on his behalf, refused a permit to Petitioner on the grounds that "The Game of Love" was ". . . not acceptable to standards of decency with immorality featured and dialogue unfit".

On June 6, 1955, Petitioner appealed the decision of the Police Censor Board to Richard J. Daley, Mayor of the City of Chicago and one of the Respondents herein, and on June 20, 1955, the latter affirmed the decision of the Censor Board refusing Petitioner

a license to exhibit the film publicly. Respondent Daley based his denial on the ground that "The Game of Love" was "immoral and obscene".

Petitioner thereupon commenced the above entitled action on July 7, 1955, by the filing of a Complaint against the City of Chicago, the Mayor, and the Police Commissioner, the Respondents herein, in the United States District Court for the Northern District of Illinois, Eastern Division.

The case was referred to a Master in Chancery. After hearings before the Master took place and "The Game of Love" was viewed by him, the Master filed his Report on January 31, 1956, in which he made Findings of Fact and Conclusions of Law (R. pp. 267-285; App. A, *infra,* pp. 1a-30a). In essence, the Master concluded that Sections 155-1 to 155-7 of the Municipal Code of Chicago were unconstitutional, that if constitutional, they had been unconstitutionally applied, and that in any event the film was not immoral or obscene under the ordinance.

Respondents filed objections to the Findings of Fact and Conclusions of Law contained in the Master's Report. These objections were sustained by the District Court (R. p. 297; App. B, *infra,* pp. 31a-52a), which held that "The Game of Love" was obscene and the censorship ordinance valid. It thereupon ordered the complaint dismissed.

Petitioner appealed the decision to the United States Court of Appeals for the Seventh Circuit, which upheld the lower court on all counts in its

decision handed down May 21, 1957 (App. C, *infra*, pp. 53a-61a).

Jurisdiction in the District Court was invoked under 28 U. S. C. Sections 1331 and 1332, in that the action arises under the Fourteenth Amendment to the Constitution of the United States and in that there is diversity of citizenship between the Petitioner, a citizen of the State of New York, and Respondents, all of whom are citizens of the State of Illinois. The amount in controversy exceeds $3,000 exclusive of interest and costs.

Reasons for Granting the Writ

1. *The Court below has decided a federal question in a manner conflicting with the applicable decisions of this Court.* Since the holding of the Supreme Court in *Burstyn* v. *Wilson*, 343 U. S. 495 (1952), it is settled law that "expression by means of motion pictures is included within the free speech and free press guaranty of the First and Fourteenth Amendments" (p. 502). In decisions subsequent to the *Burstyn* case, this Court has consistently struck down state laws providing for the censorship of motion pictures. In *Holmby Productions, Inc.* v. *Vaughn*, 350 U. S. 870 (1955), the Court, in a per curiam decision, held invalid a Kansas statute providing for censorship of all motion pictures, and for the banning of those which were "obscene, or immoral". There is no substantial difference between the Kansas statute and the Chicago ordinance here in question.

The relevant parts of the ordinance upheld by the courts below make it unlawful for any person to pub-

licly exhibit *any* motion picture in the City of Chicago without first securing a license therefor from the Commissioner of Police. This permit, according to the ordinance, is to be granted only after censorship of the contents of each motion picture and then only if the Commissioner finds that the motion picture is not "immoral or obscene". This Court has repeatedly struck down enactments aimed at imposing a prior restraint on communications protected by the First and Fourteenth Amendments. In *Near* v. *Minnesota,* 283 U. S. 697 (1931), the principle was reiterated that freedom of expression is the rule and that this freedom is as close to absolute as is possible under our system of government:

> "The exceptional nature of its (freedom's) limitations places in a strong light the general conception that liberty of the press has meant, principally, although not exclusively, immunity from previous restraints or censorship" (p. 716).

This Court restated the rule most recently in *Kingsley Books, Inc.* v. *Brown,* 25 Law Week 50, Page 4557 (1957), in upholding a remedial scheme in connection with a statute providing for the conviction of distributors of obscene literature:

> "To be sure, the limitation is the exception; it is to be closely confined so as to preclude what may be fairly deemed licensing or censorship" (p. 4558).

This Court has never approved a statute imposing censorship on content. Indeed, every licensing statute remotely involving the area of communications has been subjected to close scrutiny, and only where

the statute could be fairly deemed to regulate "with regard only to considerations of time, place and manner so as to conserve the public convenience", *Cox* v. *New Hampshire*, 312 U. S. 569, at 575, 576, has it been permitted to stand. See also *Kovacs* v. *Cooper*, 336 U. S. 77 (1949).

The approval of the Chicago ordinance by the lower courts cannot be squared with the previous decisions of this Court.

2. *The Court below has decided an important question of federal law which has not been but should be settled by this Court.*

A. Many of the lower courts have sought to limit the *Burstyn* case, *supra*, and the other subsequent motion picture cases to their facts in an attempt to uphold state censorship laws. The cardinal principle of the *Burstyn* case has thus eroded into question of whether the censorship authority can establish to the court that the words used in its enabling legislation are somehow different in kind or in quality from those used in the New York statute involved in *Burstyn, supra;* in *Commercial Pictures* v. *Board of Regents*, 346 U. S. 587 (1954); in the Texas statute involved in *Gelling* v. *Texas*, 343 U. S. 960 (1952); in the Ohio statute involved in *Superior Films, Inc.* v. *Dept. of Education*, 346 U. S. 587 (1954); or in the Kansas statute involved in *Holmby* v. *Vaughn*, *supra*. Since such an important area of federal law has become beclouded, certiorari ought to be granted in this case to state clearly that motion pictures, like newspapers, speech, and other media of communication, are not subject to prior restraint. While

this Court's decisions of last term, dealing with the question of obscenity, have restated the fundamental proposition that freedom of communication means freedom from prior restraint, nevertheless, enough ambiguity remains to breed a vast progeny of litigation.

The extensive litigation and different results involving the very Chicago ordinance in question illustrate this difficulty. The same ordinance was applied by the Board of Censors to ban the motion picture "The Miracle" (which was the subject matter of the *Burstyn* case, *supra*). The Illinois trial court found that "The Miracle" could not be banned under the ordinance in the light of the *Burstyn* case. The Illinois Supreme Court reversed and remanded that decision. *American Civil Liberties Union* v. *Chicago*, 3 Ill. 2d 334, 121 N. E. 2d, 585 (1954). However, in so doing, it attempted to limit the application of the ordinance generally by defining an "obscene" film as follows:

> ". . . if, when considered as a whole, its calculated purpose or dominant effect is substantially to arouse sexual desires, and if the probability of this effect is so great as to outweigh whatever artistic or other merits the film may possess" (p. 592).

The court went on to equate immorality with obscenity holding that they were synonymous standards for purposes of applying the Chicago ordinance to a motion picture. The record in this case clearly demonstrates how impossible it was for a body of laymen, the Board of Censors, to apply that definition in its censorship activities. Indeed, the dichotomy between

the Illinois Supreme Court's attempt to limit the ordinance and the Board of Censors' incapacity to apply the limitation acutely points up the reason to the historic opposition to any prior restraint on communications.

Following the Illinois Supreme Court's decision, this Court refused to review the case, specifically giving as its reason for refusal the absence of a final judgment. Three Justices dissented from the refusal to review (348 U. S. 979) (1955). Upon remand to the trial court, "The Miracle" was found to be obscene and the banning by the Board of Censors upheld. The case was thereupon appealed to the Illinois Appellate Court which reversed the decision of the trial court and directed the Board of Censors to issue a permit (141 N. E. 2d, 56) (1957).

The case at hand demonstrates the same confusion. The Master in Chancery who heard the witnesses and saw the motion picture found the ordinance unconstitutional (R. pp. 280, 282; App. A, *infra*, pp. 1a-30a); the Master further held that in any event the motion picture was not obscene within the meaning of the ordinance (R. p. 283). The District Court impaneled an advisory jury which was instructed to make a finding as to whether "The Game of Love" was obscene or was not obscene. No further instructions were given the jury. Eleven of the jurors returned a finding that the motion picture was obscene. One juror found that it was not obscene. (On motion of plaintiff, the court vacated the order impaneling the jury, R. p. 297).

The District Court after viewing the motion picture reversed the findings and conclusions of the Master in Chancery. It found the ordinance constitutional and the motion picture obscene. The Court of Appeals agreed (Apps. B and C, *infra*, pp. 31a to 61a).

Thus a single censorship ordinance is given diametrically opposite constructions and applications by a group of competent tribunals, both state and federal—all of which claim to be applying the principles laid down by this Court in the *Burstyn* case. We think it clear that only by granting certiorari in this case can this Court once and for all enunciate the law of the land as to censorship of motion pictures.

B. The construction placed upon the words "obscene or immoral" by the Illinois Supreme Court in *American Civil Liberties Union* v. *City of Chicago*, *supra*, relied upon by Respondents in the case at hand, cannot be squared with proscription set forth by this Court that "sex and obscenity are not synonymous". *Alberts* v. *California*, 25 Law Week 50, p. 4539 on p. 4542 (1957). We can conceive of no reason why a broader definition of obscenity will be tolerated when applied to motion pictures than is tolerated when applied to books. The Court of Appeals makes it clear that it was relying on this broader definition to uphold the lower court's decision. By no stretch of the imagination can "The Game of Love" be held to deal with sex "in a manner appealing to prurient interests".

Moreover, the record is replete with testimony indicating that not even this broad definition of

"obscenity" was applied by the members of the Board of Censors, who were totally unfamiliar with the gloss placed on the ordinance by the Illinois Supreme Court in the *American Civil Liberties Union* v. *City of Chicago* case, *supra* (R. pp. 170, 180, 194, 200). In reaching the conclusion that "The Game of Love" was immoral and obscene under the ordinance, each of the censors relied on his own individual conception of these terms, far afield indeed from the Illinois Supreme Court construction (R. pp. 141, 142, 153, 166, 172, 180, 189, 197, 200, 202), and best summarized by one member as "I call them the way I see them" (R. p. 197); "artistic or other" merits were not taken into account (R. pp. 153, 166, 181, 190, 202); four censors testified that "The Game of Love" did not arouse their sexual desires, pruriently or otherwise (R. pp. 119, 143, 178, 179, 190, 201). The District Court, in sustaining all of the objections to the Master's Report, in effect threw out all of the testimony dealing with the artistic merits introduced by Petitioner, as well as all of the testimony dealing with the calculated purpose of the motion picture. Indeed, the testimony below is fascinating reading for proof of the proposition that "a requirement that literature or art conform to some norm prescribed by an official smacks of an ideology foreign to our system" (*Hannegan* v. *Esquire*, 327 U. S. 146). It is proof of the proposition that once a prior restraint on communication is permitted, free speech becomes ephemeral. The testimony of the censors in this case amply demonstrates the need for this Court to grant certiorari and state unequivocally that a prior restraint on motion pictures is unconstitutionally alien to our freedom.

CONCLUSION

For the foregoing reasons, this petition for writ of certiorari should be granted.

Respectfully submitted,

FELIX J. BILGREY
144 West 57th Street
New York 19, New York

ABNER J. MIKVA
231 South LaSalle Street
Chicago 4, Illinois

Counsel for Petitioner

APPENDIX A

Master's Report

IN THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ILLINOIS

Eastern Division

Civil Action No. 55-C-1006

TIMES FILM CORPORATON,

Plaintiff-Appellant,

vs.

CITY OF CHICAGO, RICHARD J. DALEY and TIMOTHY J. O'CONNOR,

Defendants-Appellees.

The undersigned, David J. Shipman, Master in Chancery in and for said Court, respectfully reports to the Honorable J. Sam Perry, Judge of said Court, that pursuant to order of reference heretofore entered herein the undersigned has heard and taken evidence; has caused said evidence and the proceedings before him to be transcribed; files herewith the transcript of such evidence and proceedings together with the exhibits offered and his certificate of costs; and submits hereunder his findings of fact, conclusions of law and recommendations.

Appendix A

Master's Report

Introductory

1. This is an action for an order (a) directing the defendants (sometimes herein referred to simply as the City) to issue a permit for the plaintiff to exhibit a motion picture entitled "The Game of Love"; (b) restraining the City from interfering with the plaintiff in the exhibition of the picture; and (c) providing such other and further relief as justice shall require.

2. Federal jurisdiction is invoked because the amount in controversy exceeds $3,000.00 exclusive of costs and interest; and because there is diversity of citizenship between the parties as well as because the action arises under the First and Fourteenth Amendments to the Constitution of the United States.

3. The City had denied the application of the Plaintiff for a permit to exhibit the picture on the ground that it was immoral and obscene under a city ordinance requiring the City to refuse a permit if a picture is immoral and obscene.

4. The picture is based on a novel by Colette. It deals with the experience of a boy and a girl each about 16 years of age. In one episode it is clearly implied that the boy has sexual relations with an older woman and in another it is reasonable to infer that the boy and girl have such relations with each other. (The Master will treat the picture in greater detail in his findings of fact.)

Appendix A

Master's Report

5. The film of the picture was made part of the complaint as Exhibit A, and was introduced in evidence by the City as Defendants' Exhibit 1.

6. A copy of the City Ordinance with reference to the exhibition of motion pictures (Municipal Code of the City of Chicago, Chapter 155, Sections 155-1 through 155-7) was attached to the complaint as Exhibit B.

7. During the hearings the film was exhibited to the Master in the presence of the Court Reporter and of Counsel for the parties.

8. The Plaintiff presented as witnesses, its own Vice-President, and under Rule 43b the City's Commissioner of Police, his Deputy in Charge of Censorship matters, and the five persons who were members of its Censorship Board at the time the film was considered for a permit.

9. The Plaintiff introduced exhibits to show certain artistic awards for the film; the processing of its application for a permit; part of the records of the City in the processing of another film; and numerous reviews, announcements and advertisements about the film clipped from newspapers in other cities where the film was shown.

10. The City introduced no witnesses but introduced the film as its exhibit and arranged for its showing to the Master.

11. Counsel for both sides argued orally and submitted written briefs.

12. From the pleadings, the evidence presented and the arguments of counsel, the Master understands the respective positions of the parties briefly to be as hereunder set forth.

13. The Plaintiff's position is as follows:

a. The Ordinance is unconstitutional on its face under the First and Fourteenth Amendments to the Constitution.

b. Even though the Ordinance were held to be constitutional, the operations of the City's censorship authorities are unconstitutional and particularly so with reference to the processing of this film.

c. Even though the Ordinance and the operations of the City's censorship authorities are constitutional, the picture does not fall within any of the categories set forth in the Ordinance for which permits are to be denied. More specifically, that the picture is not immoral or obscene.

14. The City's position is as follows:

a. The Ordinance is constitutional under the First and Fourteenth Amendments.

b. The operations of the City's censorship authorities under the Ordinance are constitutional and particularly so with reference to the processing of this film for a permit.

c. The picture is immoral and obscene.

Appendix A

Master's Report

15. As the hearings progressed and especially after viewing the film, it appeared to the Master that the interests of children and adolescents might require different treatment from adults; and that this question might justify an exploration of other evidence and arguments than those offered by the parties in support of their respective positions.

16. The Master made known to counsel for the parties his special concern in this area and a number of discussions were held with counsel for both sides in an effort to bring such evidence and arguments before the Master.

17. The appointment of amici curiae and the summoning of experts in fields such as education, child psychology, art, literature and semantics either by the parties, or by the Master, or by both, were discussed.

18. As a result of these discussions and in order to save the time and expense incident to such an effort, counsel for the Plaintiff offered to assure the Master that the Plaintiff would not show or permit the showing of the film to any persons under the age of eighteen and would not object to a restraining order to that effect provided that any rights, if any, which it might otherwise have to show the film would in no way be impaired.

19. In confirmation of its offer, counsel for the Plaintiff delivered a letter dated January 25, 1956 to the Master and copy to counsel for the City. An extra copy of that letter is initialed by counsel for

both sides and made part of the record as Master's Exhibit 1.

20. In view of this offer by Plaintiff, the Master, except where otherwise indicated, considered his findings and conclusions on the basis that the picture would be shown only to persons over the age of eighteen.

21. In the absence of other evidence than is now in the record, the Master's findings and conclusions would not be modified if the picture were to be exhibited only to adults over a higher age than eighteen; but as indicated they might be different if the picture were to be exhibited to persons under eighteen or under a lower age.

22. At the suggestion of the Master and by agreement of Counsel in order to keep the record concise, the proceedings were repeatedly taken off the record by the Master or the parties. As a result, while the record is much less cumbersome and confusing than it might otherwise have been, it does not fully disclose the extent to which counsel cooperated with each other and with the Master in the presentation of this case.

23. The Master trusts that the Court will not consider it amiss for the Master to take this opportunity to commend Counsel, Messrs. Abner J. Mikva and Felix J. Bilgrey, for Plaintiff, and Messrs. John C. Melaniphy, Edward R. Hartigan and Daniel J. White for the City, for their consistent courtesy, industry and cooperation.

Appendix A

Master's Report

Findings of Fact

F-1. Plaintiff, Times Film Corporation, is a corporation organized and existing under the laws of the State of New York.

F-2. Defendant, City of Chicago, is a Municipal Corporation organized and existing under the laws of the State of Illinois.

F-3. Defendant, Richard J. Daley, is the Mayor of the City of Chicago.

F-4. Defendant, Timothy J. O'Connor, is the Commissioner of Police of the City of Chicago.

F-5. Plaintiff is a citizen of the State of New York and the Defendants are all citizens of the State of Illinois.

F-6. The action arises under the First and Fourteenth Amendments to the Constitution of the United States.

F-7. The matter in controversy exceeds the sum or value of $3,000.00 exclusive of interest and costs.

F-8. All of the defendants were properly served with summons and entered their appearances herein.

F-9. This Court has original jurisdiction of this action.

F-10. This Court has jurisdiction of the parties.

Appendix A

Master's Report

F-11. The Plaintiff has the exclusive right to distribute, to license for exhibition, and to exhibit in the City of Chicago a certain photoplay or motion picture film entitled "The Game of Love" a print of which picture was attached to the complaint as Exhibit A and made a part thereof and introduced in evidence by the Defendants as their Exhibit 1.

F-12. Said motion picture, herein sometimes referred to as the film, is an adaptation of a novel entitled "Le Ble en Herbe" written by the French authoress Gabrielle Claudine Jouvenal under the pen name of Colette.

F-13. At all times relevant to this action, the Ordinance of the City of Chicago attached to the complaint as Exhibit B, was in full force and effect.

F-14. On or about May 6, 1955, Plaintiff applied to Defendant Police Commissioner O'Connor for a permit to exhibit the film.

F-15. On June 2, 1955 Defendant Police Commissioner O'Connor notified Plaintiff that he would not issue a permit because the commanding officer of his censor unit had rejected the film on the ground that it was not acceptable to standards of decency with immorality featured and dialogue unfit.

F-16. On June 6, 1955 Plaintiff appealed the decision of Defendant Police Commissioner O'Connor to Defendant Mayor Daley.

F-17. On June 20, 1955 Defendant Mayor Daley denied the appeal of the Plaintiff and based his denial on the ground that the film was immoral and obscene.

F-18. As a result the Plaintiff was refused a permit to exhibit the film "The Game of Love" in the City of Chicago.

F-19. Except for the purpose of evidence in this case, the Plaintiff has not publicly exhibited the film in the City of Chicago.

F-20. The Plaintiff has been directly damaged by not being able publicly to exhibit said film.

F-21. According to the testimony, the film is a faithful adaptation of the novel "Le Ble en Herbe".

F-22. In the course of the proceedings before him, the parties requested the Master to set forth in his findings the story of the film as it appeared to him.

F-23. The story as it appeared to the Master deals primarily with the experiences of two adolescents: a boy Philip, and a girl Vinca, each about 16 years of age.

F-24. They are having their summer vacation on the coast of France with their respective parents who live in the same boarding house.

F-25. At the beginning of the picture it appears that the girl has a romantic attachment for the boy; but that the boy is still at that state of adolescence in

which sports interest him more than girls do, and he rejects her advances.

F-26. In one of the opening episodes the boy is canoeing off shore when his canoe is upset. In the confusion he loses his clothes and finds himself coming up on shore without them. He finds a little girl's large straw hat close to the water's edge and, covering his private parts with the hat, he races along the beach.

F-27. At the same time a girls' school is having an outing on the beach and one of the little girls seeing the boy running along the beach with the hat says something to the effect that he need not try to cover himself because they have seen everything already.

F-28. The boy's backside is visible to the motion picture audience as he runs along the beach, but none of the boy's private parts is visible and there is no other problem of nudity connected with the film.

F-29. As the story develops, a mature woman, somewhere in her 30s or 40s, comes to the coast. The boy delivers bread to her home. She is attracted by him.

F-30. No acts of seduction nor any physical contact is shown between the woman and the boy; but it is clearly implied and not denied that she seduces him and that they are engaged in intimate sexual relations.

Appendix A

Master's Report

F-31. His seduction causes an awakening of the boy's sexual desires and for a period of several days and nights he is almost constantly in her company at the house which she occupies.

F-32. During this period the boy completely neglects his girl friend and his family.

F-33. Then for some reason which is not clear, the woman decides that the attachment must end and she terminates it abruptly.

F-34. The boy is greatly disturbed by the termination of his new and deeply emotional experience.

F-35. Meanwhile, the girl and the boy's mother both suspect what has been going on. Among other things, they observe a bite mark on the boy's shoulder which was apparently sustained in his relations with the older woman.

F-36. Subsequently the girl and boy acknowledge their romantic interest in each other and enter into a more mature relationship in which it may be reasonably inferred that they also have sexual relations.

F-37. This new relationship appears to bring them happiness.

F-38. It appears clearly to have resulted in great pleasure and satisfaction to the girl.

Appendix A

Master's Report

F-39. Then the summer comes to a close and the picture ends on a slight note of melancholy, such as one might experience at the end of a long summer vacation, or as if one were feeling the first pangs of growing older.

F-40. The parties agree that the above findings of the Master are a fair summary of what the film shows.

F-41. The picture nowhere expressly shows that serious and harmful consequences will result from the physical relations implied or inferred.

F-42. Whether or not harmful consequences of the conduct in question are suggested depends primarily on the maturity and experience of the persons who view the picture.

F-43. To most persons over the age of 18 harmful effects of such conduct would be suggested.

F-44. To most children and persons in their adolescence, harmful effects would not be suggested.

F-45. The age of eighteen is a reasonable modal point over which the consequences of such conduct would be reasonably inferred and under which they would not.

F-46. The words immorality and obscenity have many meanings and the Ordinance itself neither states nor clearly embodies any given meaning.

F-47. Sexual relations between an unmarried adolescent and an adult and between unmarried adolescents are clearly contrary to the mores of the preponderant majority of the people of the City of Chicago, of the State of Illinois, and of the United States. Such conduct is ethically disapproved, condemned and termed immoral by most and obscene by some.

F-48. The City offered as its definition of immorality and obscenity the following words covering this same Ordinance from the opinion of the Supreme Court of Illinois in *American Civil Liberties Union* v. *Chicago,* 3 Ill. 2nd 334, in which, after equating the terms immoral, and obscene as used in the Ordinance, the Court said:

> "That a motion picture is obscene within the meaning of the ordinance if, when considered as a whole, its calculated purpose or dominant effect is substantially to arouse sexual desires, and if the probability of this effect is so great as to outweigh whatever artistic or other merits the film may possess. In making this determination the film must be tested with reference to its effect upon the normal, average person."

F-49. When considered as a whole, the calculated purpose of the film in litigation is not substantially to arouse the sexual desires.

F-50. The testimony of the censorship authorities showed that some of them were sexually stimulated by the film but that a majority were not.

Appendix A

Master's Report

F-51. The evidence further showed that the majority of the censorship authorities did not take into consideration the quesfion whether or not the picture tended to arouse sexual desires.

F-52. The censorship authorities did not take into consideration the artistic merit of the film.

F-53. The censorship authorities did not take into consideration whether the picture was a classic or based on a classic.

F-54. The Plaintiff concedes that the Commissioner of Police is a great police officer, that his Deputy in Charge of Censorship is an honest, industrious, able police officer, and that the members of the board are conscientious, honorable, well-meaning citizens.

F-55. The evidence shows that there are no particular qualifications for appointment to the Board.

F-56. None of the members has any special education, training or skill in the fields of sex, motion pictures or the arts.

F-57. The film has been shown in over 150 cities in the United States.

F-58. There was no evidence offered of any increase in crime, sexual or otherwise, or other harmful effects traceable to the exhibition of this picture where it has been shown.

Appendix A

Master's Report

F-59. The motion picture received two awards: The Diploma of Merit at the Eighth International Edinburgh Film Festival, and the Grand Prize for French Cinema of the French Society for the Encouragement of Art and Industry.

F-60. The evidence shows that these are the equivalent of the American Oscar awarded to American films by the American Academy of Motion Pictures.

F-61. A number of published reviews were introduced in evidence by Plaintiff and the preponderance of opinion in these reviews is that the film has substantial artistic merit.

F-62. Some of Plaintiff's own exhibits indicate however, that the motion picture is a sophisticated affair primarily for adults.

F-63. Some of Plaintiff's own exhibits expressed the view that this motion picture is definitely not for children.

F-64. The City requested that the Master apply the aforementioned definition of the Illinois Supreme Court to the film upon the basis of his own reactions to the film.

F-65. The Plaintiff agreed that this might be done without conceding that the Illinois Supreme Court's definition was binding and without conceding its other legal positions, namely that the Ordinance was un-

constitutional on its face, that the procedures of the censorship authorities were unconstitutional, and that the film itself was neither immoral nor obscene.

F-66. The Master expressed his reluctance to act as a censor, especially where one of the underlying issues was whether anyone could act as a censor.

F-67. The Master further realizes that his findings in this respect must necessarily in large part be subjective at least in the sense that the Master is uncertain how far his reaction to the film is the same as the reactions of others who might see it.

F-68. However, the Master has acceded to the request of the City and the agreement of the Plaintiff and submits his findings in this respect hereunder.

F-69. Concerning the applicability of the definition, the Master finds from viewing the film:

a. That when considered as a whole, the calculated purpose of the film is not substantially to arouse sexual desires.

b. That the dominant effect of the film when considered as a whole, however, would substantially arouse sexual desires in some normal adult persons; would not substantially arouse sexual desires in other normal adult persons; and would not arouse sexual desires at all in other normal adult persons.

c. That the Master cannot determine with any degree of accuracy even in rough percentages the com-

parative number of persons who would be substantially aroused, slightly aroused and not aroused at all.

d. That the picture is more likely to arouse sexual desires in the normal adult person than for example, a street car, a flag pole, a pocket book or a lock of hair, but less likely to arouse sexual desires in the normal adult person than for example, a pretty girl in a modern bathing suit, a dancing line in a musical comedy or the many advertisements appearing in reputable publications for lingerie, cigarettes and a large variety of other products.

e. That the dominant effect of the film on substantial numbers of children and adolescents under the age of 18 might well be to arouse their sexual desires.

f. That its exhibition to juveniles and adolescents might lead to an increase among them of seduction, delinquency and statutory rape.

g. That the exhibition of the picture to such juveniles and adolescents would misinform and mislead substantial numbers of them as to the moral attitudes of our society and as to the serious consequences to juveniles and adolescents of emulating the conduct dealt with in the film.

F-70. The Master makes the same findings also when he considers his viewing of the film together with all the other evidence introduced.

F-71. In making the above findings with regard to the effect of showing the film to juveniles and adoles-

cents, the Master is mindful of the circumstances under which motion pictures are often viewed by juveniles and adolescents.

F-72. The Master has in mind for instance, the prevalence of romancing and spooning among juveniles and adolescents in motion picture theaters and in automobiles at outdoor theaters.

F-73. No attempt was made by the City to inform the censorship authorities of, or to require them to apply, the standards of immorality and obscenity set forth by the decision of the Illinois Supreme Court in *American Civil Liberties Union* v. *Chicago,* 3 Ill. 2d 344.

F-74. The censorship authorities made no attempt to nor did they apply these standards.

F-75. No standards were prescribed or suggested by the City to be used by the censorship authorities in determining whether a motion picture is immoral or obscene other than the Ordinance itself.

F-76. The censorship authorities have not developed any consistent standards, and many of the individual tests used by the censors are irrelevant to any notion of immorality or obscenity.

F-77. The Master is unable to find that the picture is immoral or obscene under the definition of the Supreme Court of Illinois.

F-78. The Master is unable to find that the picture is immoral or obscene except as hereinafter set forth.

F-79. If the Ordinance means that a picture which while not showing the actual conduct, implies that conduct has taken place, which is clearly contrary to the mores of the preponderant majority of the people of the City of Chicago, or of the State of Illinois or of the United States, is immoral or obscene, then in that sense the picture is immoral or obscene.

F-80. If the Ordinance means that such a picture is immoral or obscene if it also suggests that such conduct may be pleasant without clearly showing or clearly suggesting the harmful consequences of such conduct, then in that sense the picture is immoral or obscene.

Conclusions of Law

C-1. The Court has jurisdiction of the parties and of the subject matter of this cause of action which is properly brought under Sections 1331 and 1332 of Title 28 of the United States Code.

C-2. The right of freedom of expression is inherent in our law, basic in our philosophy of government, essential to our way of life and guaranteed by the First and Fourteenth Amendments to our Constitution.

C-3. The greatest protection possible will be afforded this right consistent with other basic rights or interests.

C-4. Our Courts have been even more zealous in protecting this right where prior restraints are involved than in the area of punishment for abuse.

C-5. But the right of freedom of expression is not unlimited.

C-6. And even protection against prior restraints is not unlimited.

C-7. However, the limitation of protection against prior restraints will be recognized only in exceptional cases.

C-8. Such limitations will be considered in cases such as where there is clear and present danger to the security of the nation, where there is an incitement to violence, where the expression itself has the harmful effects of force rather than an appeal to reason, or where some other high and overriding interest or right requires it.

C-9. But such limitations will be permitted as narrowly as possible to accommodate these other rights or interests, and must themselves be limited and controlled by definite, reasonable and practicable standards.

C-10. Expression by means of motion pictures is included within the protection afforded freedom of expression by the First and Fourteenth Amendments to the Constitution.

C-11. With regard to the present case, one question before us is whether a City Ordinance insofar as it directs the City authorities to prevent the exhibition of a motion picture on the ground simply that it is "immoral or obscene" is unconstitutional as an infringement of the right to freedom of expression.

C-12. The words "immoral or obscene" each have so many meanings and are so vague that it is impossible to conclude either (a) what if any overriding interest the Ordinance seeks to protect or (b) that standards are provided adequate to confine the limitation on freedom of expression to the area in which such a limitation might be recognized.

C-13. On its face therefore, this Ordinance appears to be unconstitutional.

C-14. However, before declaring State Statutes or City Ordinances unconstitutional for vagueness and lack of standards, the Federal Courts may look for clarification and standards to the decisions of the State's Courts with regard to the enactments in question.

C-15. This Ordinance and the very words "immoral and obscene" were recently before the Supreme Court of Illinois in *American Civil Liberties Union* v. *Chicago,* 3 Ill. 2d 334.

C-16. In the opinion in that case the Illinois Supreme Court equated the terms immorality and obscenity as used in the Ordinance and held "that a

motion picture is obscene within the meaning of the Ordinance if, when considered as a whole, its calculated purpose or dominant effect is substantially to arouse sexual desires, and if the probability of this effect is so great as to outweigh whatever artistic and other merits the film may possess".

C-17. The Court also held that "In making this determination the film must be tested with reference to its effect upon the normal, average person."

C-18. The Court further held that the determination of the censor authorities was subject to judicial review and that upon such review "the plaintiff does not carry a burden of proving that that action was arbitrary and unreasonable, but rather that it must affirmatively be made to appear that the film fairly falls within the proscriptive terms of the ordinance".

C-19. Thus the Supreme Court of Illinois has defined the terms "immoral and obscene" so that the interest which the City seeks to protect by its limitation on freedom of expression may be recognized.

C-20. At the same time the Supreme Court of Illinois attempts to furnish a standard by which the limitation may be applied and by which it may itself be limited.

C-21. Moreover by its holding the Supreme Court of Illinois provides certain procedural requirements in order to assure due process in the application of the Ordinance.

C-22. It now becomes our task in the light of this definition of the Supreme Court of Illinois to determine first, whether the interest therein disclosed is adequate to justify the limitation which the Ordinance seeks to impose on the right of freedom of expression.

C-23. With due respect to the high standing of the Supreme Court of Illinois before the bar of this state and of the country generally, and for the ability and breadth of view of the Justice who wrote the opinion, we are unable to conclude that the City's interest in preventing the probability of the arousal of sexual desires in normal persons is so overriding that it justifies the City's attempt to limit the basic right of freedom of expression guaranteed by the First and Fourteenth Amendments to the Constitution.

C-24. A moment's reflection, not only on the literature and art of our country, but also, for instance, its advertising, its theatre and television, its motion pictures and newspapers, its songs and music, its fundamental institutions of courtship, marriage and the family, and on many other phases of our way of life, and the communications incident and desirable or necessary thereto, casts great doubt on the proposition that sexual desires or their arousal are in themselves evil, or considered evil by the preponderant majority or even by a substantial minority of our people.

C-25. That the mere arousal of sexual desires in itself is not an evil is implicit not only in the contentions of plaintiff's counsel, but in the testimony of some of the members of the censorship board.

C-26. Nor must the Court be unaware that there is substantial, and perhaps preponderant, opinion among physicians, psychiatrists and other social scientists, among philosophers, lawyers and social workers, and among the people generally, that sexual desires and their arousal are an accepted part of our way of life.

C-27. At least it cannot be concluded that, for the purposes of limiting the basic constitutional protection to freedom of expression, arousal of sexual desires in normal persons is in the same category as danger to the nation at war, or incitements to riots and acts of violence, or to the overthrow by force of orderly government, or even with expressions which have the effects of force.

C-28. The Master is impelled to the conclusion and does conclude that the interest of the State in preventing the probability of the arousal of sexual desires in normal persons is not a sufficiently overriding consideration to justify an Ordinance authorizing prior restraint on freedom of expression.

C-29. This is not to say (and the Master cannot emphasize this too strongly) that to prevent the arousal of sexual desires among certain classes of persons under certain circumstances may not concern the State to the extent that its interest may be overriding and justify a carefully drawn limitation even on the basic protection afforded freedom of expression against prior restraint.

C-30. The record shows and the parties are fully aware of the Master's deep concern since viewing the picture with the problem of permitting its exhibition to children and adolescents.

C-31. The State has a basic interest in the welfare of its children and adolescents. This also is inherent in our way of life and embodied in all areas of our law. Included in this interest are their proper education and their special protection against harm because of their tender susceptibilities, their immaturity and their inexperience.

C-32. This interest is sufficiently overriding so that under proper circumstances a carefully drawn limitation upon the protection afforded freedom of expression even against prior restraints should be recognized.

C-33. After viewing the picture, the Master asked the parties whether they could give special attention in their presentation of evidence, their arguments, their briefs or possibly by stipulation, to the circumstances under which motion pictures are shown to and viewed by children and adolescents; to the probable effects upon them of the exhibition of this picture to them; and to the possibility of excluding them even though the Ordinance should be held invalid or inapplicable to this picture.

C-34. Counsel expressed a desire to comply with the Master's request but because of limitations of time and expense were unable to do so to the extent they

and the Master desired. As a result the Master had considerable difficulty preparing a report which he was of the opinion should include findings, conclusions and recommendations in this area.

C-35. However, for the purpose of this report as it regards this picture, that problem has now been resolved. For the Master is in receipt of assurance from Plaintiff's counsel that Plaintiff will not permit this picture to be exhibited to persons under the age of eighteen. The Master considers this age a practicable, modal line between adolescents and adults.

C-36. The Master is unable to conclude that the Ordinance clearly discloses the interest which the City seeks to protect against the right of freedom of expression, or standards, or procedures by which the limitation on the right may be determined.

C-37. The Master is unable to conclude that the film falls within the definition of immorality and obscenity set forth by the Supreme Court of Illinois.

C-38. The Master is unable to conclude that the interest disclosed by the Supreme Court of Illinois is so overriding that it can support the limitation on freedom of expression embodied in the Ordinance.

C-39. Yet the Court whether or not it adopts all or any of the foregoing conclusions of the Master concerning the interest and standards disclosed by the Supreme Court of Illinois, may still desire to examine

the interest and standards if any, and the procedures, disclosed in the actual operations of the City's censorship authorities.

C-40. The Master is constrained to conclude that as revealed by the evidence in this case, the censorship authorities in their activities generally and particularly with reference to the censorship of this picture, were either unaware of or else completely disregarded even the interest disclosed and the standards provided by the Supreme Court of Illinois.

C-41. The Master further concludes that the operations of the censorship authorities neither disclosed any overriding interest they were protecting nor revealed any consistent standards they were applying.

C-42. The Master therefore concludes that, even if the Court should find the Ordinance valid on its face or by construction of the Illinois Supreme Court, the application of the Ordinance by the censorship authorities was unconstitutional, and particularly so with reference to the film entitled the "Game of Love."

C-43. The Master wishes to make it clear to this Honorable Court that he in no sense means to imply that the censorship authorities are not high minded, capable public servants. On the contrary, they are to be commended for their conscientious devotion to their duties as they see them and for their cooperation and courtesy as witnesses.

Appendix A

Master's Report

C-44. The Master has read and studied the First and Fourteenth Amendments; many of the cases of the United States Supreme Court, of the Illinois Supreme Court and of other Courts dealing with these amendments and with the right of freedom of expression; many other works of literature and law upon the subject; the Ordinance in question; the transcript in this case; and the briefs of counsel. The Master has viewed the picture and listened to the arguments of counsel. Yet the Master profoundly doubts whether at least under this Ordinance he could do any better job of censoring motion pictures than these five citizens and excellent public servants.

C-45. The difficulties seem to arise from the Ordinance itself and perhaps from the statute under which it was enacted. These were passed many years ago and are not young and vigorous enough to contend with the tremendous developments in science, education, public opinion and constitutional law. Perhaps a new Ordinance, clearly disclosing overriding interests, carefully limited, defining standards, and providing for proper procedures, would receive constitutional recognition as a limitation even on the protection afforded against prior restraint on freedom of expression. And perhaps such an Ordinance could be constitutionally administered by persons like the members of the censor board or by these very members themselves.

C-46. But assuming that the Ordinance should be allowed to stand, there still remains to be reported the Master's conclusions as to the remaining ques-

tion: Whether the motion picture is immoral or obscene?

C-47. The Master concludes that it has not been made affirmatively to appear as required by the Illinois Supreme Court that with reference to its effect on the normal, average person, the film's calculated purpose or dominant effect is substantially to arouse sexual desires, and that the probability of this effect is so great as to outweigh whatever artistic or other merits the film possesses.

C-48. The Master further concludes that when considered as a whole, neither the calculated purpose nor the probable dominant effect of the film is substantially to arouse sexual desires in the normal average person, nor is the probability of such an effect so great that it outweighs the artistic or other merits of the film.

C-49. The Master comes to these conclusions concerning the effect of the film whether he considers only the testimony and exhibits introduced into evidence by the Plaintiff; or only his own viewing of the film introduced by the Defendants; or whether he considers both.

C-50. The Master further concludes that the public exhibition of a motion picture to adults cannot be restrained merely because it implies conduct and deals with situations which are contrary to the mores of a preponderant majority of the community or of the State or of the nation, even if it does not express or

clearly suggest the harmful consequences of such conduct.

C-51. The Master further concludes that Plaintiff has been directly damaged by not being permitted to exhibit the film and will continue to be so damaged unless Defendants are restrained from interfering with its exhibition.

Recommendations

R-1. That the Court adopt the Findings of Fact and Conclusions of Law herein submitted;

R-2. That the Defendants be restrained from interfering with the public exhibition of the motion picture entitled "The Game of Love";

R-3. That the Plaintiff be restrained from the exhibition of the motion picture to persons under the age of eighteen;

R-4. That the Master's Certificate of Costs be approved; the Master's fees paid by the application of the funds now on deposit with him and the payment of the balance by Plaintiff; and upon such payment the Plaintiff's bond be discharged and the Costs taxed against Defendant, City of Chicago.

Respectfully submitted,

David J. Shipman,
Master in Chancery United States District Court.

Dated at Chicago, Illinois, this 31st day of January, 1956.

APPENDIX B

Verdict

UNITED STATES DISTRICT COURT

* * (Caption—55-C-1006) * *

We, the undersigned jurors, having been directed by the Court to view the film and hear the sound transcription simultaneously of the movie called "The Game of Love", and having done so, we do hereby find that the same is not an obscene picture and is fit for public showing.

Stanley Talbert

And afterwards on, to wit, the 21st day of March, 1956 there was filed in the Clerk's office of said Court a certain Memorandum Of The Court in words and figures following, to wit:

Memorandum

UNITED STATES DISTRICT COURT

* * (Caption—55-C-1006) * *

This action is before the Court upon the objection of the defendants to the Master's Report.

Section 155-4 of the Municipal Code of the City of Chicago provides as follows:

> "Such permit shall be granted only after the motion picture film for which said permit is requested has been produced at the office of the

commissioner of police for examination or censorship.

"If a picture or series of pictures, for the showing or exhibition of which an application for a permit is made, is immoral or obscene, or portrays depravity, criminality, or lack of virtue of a class of citizens of any race, color, creed, or religion and exposes them to contempt, derision, or obloquy, or tends to produce a breach of the peace or riots, or purports to represent any hanging, lynching, or burning of a human being, it shall be the duty of the commissioner of police to refuse such permit; otherwise it shall be his duty to grant such permit.

"In case the commissioner of police shall refuse to grant a permit as hereinbefore provided, the applicant for the same may appeal to the mayor. Such appeal shall be presented in the same manner as the original application to the commissioner of police. The action of the mayor on any application for a permit shall be final."

The same ordinance was before the Supreme Court of Illinois in the case of *American Civil Liberties Union* v. *Chicago*, 3 Ill. 2nd 334. In that case, the court speaking through Chief Justice Schaefer, defined the term "obscene" as follows:

"That a motion picture is obscene within the meaning of the ordinance if, when considered as a whole, its calculated purpose or dominant effect is substantially to arouse sexual desires, and if

the probability of this effect is so great as to outweigh whatever artistic or other merits the film may possess. In making this determination the film must be tested with reference to its effect upon the normal, average person."

The movie in question is entitled "The Game of Love", which is an adaption of a novel entitled, "Le Ble en Herbe" written by the French authoress Gabrielle Claudine Jouvenal under the pen name of Collette.

The film features the experience of two adolescents of approximately sixteen years of age, a boy, Philip, and a girl, Vinca. They are vacationing on the coast of France with their respective families who live in the same boarding house.

At the very outset, Vinca displays a romantic attachment for Philip who remains indifferent.

During the opening stages of this movie, Philip is shown canoeing off the coastal shore, when the boat overturns and he loses all of his clothes. Swimming back, he comes upon the shore in the midst of a group of convent school girls who are having a beach outing under the supervision of two nuns. Philip finds the small beret of one of the girls, covers himself in a suggestive manner, and begins to run along the beach. The girls he meets along the way home, however, tell him there is no longer any need for him to cover himself. Later, he is taken into custody by the local police for indecent exposure but released when his parents and Vinca explain the circumstances.

As the story develops, an adult woman of approxi-

Appendix B

Memorandum

mately 30 years of age, comes to the coast. Philip delivers bread to her home and she is attracted by him. It is clear from the film and its dialogue that she seduces him and that they consort with each other. The woman is shown locking herself and the boy in her sleeping quarters for the night. For several days and nights thereafter, Philip is constantly in her company at her house. The woman suddenly terminates the relationship and refers to Philip as a passing vacation "whim".

The film closes with a church scene from which it could possibly be implied that Philip and Vinca will marry.

On May 6, 1955, the plaintiff applied to the defendant Police Commissioner for a permit to exhibit the film in question. On June 2, 1955, the Commissioner notified the plaintiff that the application for permit was denied on the ground that the Censorship Board had rejected the film because it was not acceptable to standards of decency, with immorality featured and dialogue unfit.

On June 6, 1955, the plaintiff appealed the decision of the Commissioner to the Mayor.

On June 20, 1955, this appeal was denied on the ground that the film was immoral and obscene. The action in the District Court of the United States followed, jurisdiction of which was based on diversity of citizenship and upon the alleged infringement by the local authorities of the plaintiff's rights under the 1st and 14th Amendments of the United States Constitution.

Pursuant to the urgent request of the plaintiffs,

the Master took full and complete evidence and rendered three basic rulings: (1) the calculated purpose of the film in litigation is not substantially to arouse the sexual desires within the definition of the Supreme Court of Illinois as announced in the case of *American Civil Liberties Union* v. *Chicago, supra:* (2) The interest of the State in preventing the probability of the arousal of sexual desires in normal persons is not a sufficiently overriding consideration to justify an ordinance authorizing prior restraint on freedom of expression; (3) The ordinance in question is unconstitutional because of vagueness and lack of standard.

The Master was right when he ruled against the exhibition of the film to persons under the age of eighteen. That, for the purpose of enforcement of the restriction, is of little value. It is this Court's view that he did not go far enough. The Court had the opportunity to and did view the film and it finds that the local censorship authorities were warranted in finding it obscene within the recent definition of the Supreme Court of Illinois. The dominant tone of the film is sexuality. The young hero's accidental loss of wearing apparel during the course of the canoeing accident in and of itself is not startling. The fact, however, that he is depicted in the nude as he comes from the water before the French convent girls who have historically been associated with rigidity and seclusion, serves only to emphasize the hero's natural state and to focus the attention of the audience on it. The major part of the movie then dwells on his illicit relationship with an adventurous adult woman, and

later with Vinca. The film appears to casually write off this unconventional behavior as a mere interlude in the maturing process of the young hero.

The Court is unable to detect any purpose other than an emphasis upon its sexuality.

The serious problem which confronts the Court in this action is the question whether the interest of the State in this particular area is a sufficiently overriding consideration as to justify an ordinance authorizing a prior restraint upon the freedom of expression. Specifically, does the First Amendment to the Federal Constitution allow a local authority to censor films under the statute designed to prevent the exhibition of obscene movies? The Master has answered in the negative. This Court is of the view that the First Amendment allows such limitation. The right of free speech is a political right granted by the First Amendment. It is not absolute and unlimited. In the case of *Kear* v. *Minnesota,* 283 U. S. 697, the Supreme Court of the United States said at page 716:

> "No one would question but that a government might prevent actual obstruction to its recruiting service or the publication of the sailing dates of transports or the number and location of troops. On similar grounds, the primary requirements of decency may be enforced against obscene publications. The security of the community life may be protected against incitements to acts of violence and the overthrow by force of orderly government."

Appendix B

Memorandum

It should be noted that the Court placed "the primary requirements of decency" on a parallel level with matters relating to national security.

In *Chaplinsky* v. *New Hampshire*, 315 U. S. 568, the court stated, at pages 571-572:

> "Allowing the broadest scope to the language and purpose of the Fourteenth Amendment, it is well understood that the right of free speech is not absolute at all times and under all circumstances. There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem. These include the lewd and obscene, the profane, the libelous, and the insulting or 'fighting' words—those which by their very utterance inflict injury or tend to incite an immediate breach of the peace. It has been well observed that such utterances are no essential part of any exposition of ideas and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality."

This principle of law was reaffirmed in the recent case of *Joseph Burstyn, Inc.* v. *Wilson*, 343 U. S. 495, pages 502-503:

> "To hold that liberty of expression by means of motion pictures is guaranteed by the First and Fourteenth Amendments, however, is not the end

of our problem. It does follow that the Constitution requires absolute freedom to exhibit every motion picture of every kind at all times and all places. That much is evident from the series of decisions of this Court with respect to other media of communication of ideas."

The prevention of the exhibition of obscene films in the light of the foregoing judicial announcements is consistent with the constitutional guaranty of the First Amendment. It is a proper exercise of the police power reserved to the individual States. In the light of the language of the Supreme Court in the cited cases, this Court cannot agree with the suggestion of the plaintiff that the individual States and their municipalities must wait until a questionable film is shown and then resort to its remedy by way of protracted criminal proceedings.

This Court is aware of the recent decision in *Holmby Productions, Inc.* v. *Vaughn*, 350 U. S. 870, which is vigorously advanced by the plaintiff in support of its position. In the absence of a complete record, the specific ground for the *per curiam* order of reversal is not ascertainable. In the light of the foregoing cases, which have never been overruled, and in view of the fact that the Supreme Court in the *Burstyn* case expressly reserved decision on the question as to whether the local authorities can censor and prevent the showing of obscene films, this Court refuses to assume that the Supreme Court decided so vital a question by way of a *per curiam* order.

Finally, the terms "immoral" or "obscene" are not so vague and uncertain as to render the ordinance in question unconstitutional. First, this Court agrees with the analysis and ruling of the Supreme Court of Illinois that the term "immoral" is little more than a synonym for "obscene". *American Civil Liberties Union* v. *Chicago*, 3 Ill. 2d 334, 348.

The term "obscene" has been the target of constitutional attacks in criminal prosecutions under 18 USCA 1461, which proscribes, among other things, the mailing of obscene articles through the mails. These attacks have been grounded on the contention that the term in question does not lay down a definite standard of criminal liability, thereby rendering the statute unconstitutional. This contention has been overruled. (*Rosen* v. *U. S.*, 161 U. S. 29; *Tyomies Publishing Co.* v. *U. S.*, 211 F. 385; *U. S.* v. *Rebhuhn*, 109 F. 2d 512.)

If the term "obscene" so sufficiently provides a definite standard of criminal liability in the cited statute within constitutional requirements that it can support a judgment of conviction and possible commitment of the offender to a penal institution, *a fortiori* it must be equally definite and certain for purposes of licensing.

If this ordinance is to be voided for the reason that the terms "obscene" and "immoral" are too vague and indefinite, the State's police power in the area of health and morals, which has always enjoyed constitutional sanction, will be seriously invaded and reduced by the film industry, which currently presents one of

the most popular and effective media of communication.

The *Burstyn* case is distinguishable from the case at bar. In that case, the Supreme Court dealt with the term "sacrilegious". It is a highly technical term in the field of theology and is open to a variety of meanings and interpretations depending upon which religious sect is consulted for a definition. The term "obscene", however, rests upon principles of basic morality. As Justice Harlan said in the *Rosen* case, everyone "must take notice of what in this enlightened age is meant by decency, purity and chastity in social life and what must be deemed obscene, lewd and lascivious."

This Court holds that the film in question is obscene within the aforesaid definition of the Supreme Court of Illinois; that the local municipal authorities properly exercised a police power and that the ordinance is not unconstitutional.

Objections of the defendants to the Master's Report will be sustained.

Enter:

J. S. Perry,
Judge.

March 21, 1956.

Appendix B

Order on Objections

IN THE UNITED STATES DISTRICT COURT

* * (Caption—55-C-1006) * *

This cause came on to be heard on the Master's Report and defendants' objections thereto and on the objection of the plaintiff to the impanelling of a Jury. This Court has carefully examined the pleadings and evidence, and files simultaneously herewith its memorandum.

It is, therefore, Ordered—

(1) That objection of plaintiff to the impanelling of a jury be and it is hereby sustained, and the order impanelling said jury and the verdict of said jury be and they are hereby vacated and set aside

(2) That the objections of the defendants to the Master's Report be and they are hereby sustained

(3) That defendants file appropriate findings of fact and conclusions of law and an appropriate decree in accordance with this order and memorandum of this Court on April 2, 1956 at 10:00 A. M.

(4) That plaintiff file its objections, if any, on or before April 15, 1956 and that briefs in support thereof and in opposition thereto be filed in accordance with Rule 13 of the Rules of this Court.

Appendix B

Order Amending Master's Report

IN THE UNITED STATES DISTRICT COURT

* * (Caption—55-C-1006) * *

It Is Ordered by the Court that leave be and hereby is granted to amend the Master's Report on its face as follows:

3rd line, page 14, change "are" to "is"

9th line, page 17, change "adults" to "Adolescents"

14th line, page 22, change "persons" to "person"

Order Amending Memorandum

IN THE UNITED STATES DISTRICT COURT

* * (Caption—55-C-1006) * *

On its own motion, this Court, pursuant to the provisions of Rule 60(a) of Federal Rules of Civil Procedure which provides for the correction of clerical errors at any time, corrects lines 13 and 14 on page 6 of its Memorandum heretofore filed, to read as follows: "The right of free speech is a political right guaranteed by the First Amendment."

Appendix B

Findings of Fact and Conclusions of Law

UNITED STATES DISTRICT COURT

* * (Caption—55-C-1006) * *

This cause came on to be heard on the report of the Master in Chancery David J. Shipman, the defendants' objections thereto and the objections to the impaneling of a jury, and the court having carefully examined the said Master's Report, the defendants' objections thereto and considering the plaintiff's objections to the impaneling of the jury and having carefully examined the pleadings and evidence in this cause makes the following findings of fact and conclusions of law:

Findings of Fact

The Court finds as a matter of fact:

1. That plaintiff, Times Film Corporation is a corporation organized and existing under the laws of the State of New York.

2. That defendant, City of Chicago, is a Municipal Corporation organized and existing under the laws of the State of Illinois.

3. That defendant, Richard J. Daley, is the Mayor of the City of Chicago.

4. That defendant, Timothy J. O'Connor, is the Commissioner of Police of the City of Chicago.

Appendix B

Findings of Fact and Conclusions of Law

5. That plaintiff is a citizen of the State of New York and the defendants are all citizens of the State of Illinois.

6. That the action arises under the First and Fourteenth Amendments to the Constitution of the United States.

7. That the matter in controversy exceeds the sum or value of $3,000.00 exclusive of interest and costs.

8. That all of the defendants were properly served with summons and entered their appearances herein.

9. That this Court has original jurisdiction of this action.

10. That this Court has jurisdiction of the parties.

11. That the plaintiff has the exclusive right to distribute, to license for exhibition, and to exhibit in the City of Chicago a certain photoplay or motion picture film entitled "The Game of Love" a print of which picture was attached to the complaint as Exhibit 1.

12. That said motion picture, herein sometimes referred to as the film, is an adaptation of a novel entitled "Le Ble en Herbe" written by the French authoress Gabrielle Claudine Jourvernal under the pen name of Colette.

13. That at all times relevant to this action, the Ordinance of the City of Chicago attached to the complaint as Exhibit B was in full force and effect.

14. That on or about May 6, 1955, plaintiff applied

to defendant Police Commissioner O'Connor for a permit to exhibit the film in the City of Chicago.

15. That on June 2, 1955 defendant Police Commissioner Timothy J. O'Connor, on the recommendation of the Censor Board refused to issue a permit to the plaintiff for the exhibition of the film in the City of Chicago upon the ground that the film was obscene.

16. That on June 6, 1955 plaintiff appealed the decision of defendant Police Commissioner O'Connor to defendant Mayor Daley.

17. That on June 20, 1955 defendant Mayor Daley denied the appeal of the plaintiff and based his denial on the ground that the film was immoral and obscene.

18. That as a result the plaintiff was refused a permit to exhibit the film "The Game of Love" in the city of Chicago.

19. That except for the purpose of evidence in this case, the plaintiff has not publicly exhibited the film in the city of Chicago.

20. That the Court has viewed the said film "The Game of Love" in evidence as defendants' Exhibit 1. That the film substantially features the experiences of two adolescents of approximately sixteen years of age, a boy, Philip, and a girl, Vinca. They are vacationing on the coast of France with their respective families who live in the same boarding house. At the very outset, Vinca displays a romantic attachment for Philip who remains indifferent.

During the opening stages of this movie, Philip is shown canoeing off the coastal shore, when the boat

Appendix C

Opinion of Court of Appeals, Seventh Circuit

The ordinance now under attack, as we have seen, uses the words "immoral or obscene." The Illinois Supreme Court has held, in speaking of this ordinance, that these words are synonymous and that a motion picture is obscene or immoral, within the meaning of the ordinance, if, when considered as a whole, its calculated purpose or dominant effect is substantially to arouse sexual desires, and if the probability of this effect is so great as to outweigh whatever artistic or other merits the film may possess. In making this determination the film must be tested with reference to its effect upon the normal, average person. *Amer. Civil Liberties Union* v. *Chicago,* 3 Ill. 2d 334, 347.

With this interpretation of the words "obscene" and "immoral" read into the ordinance now before us, we believe that the ordinance is not vague, as contended by plaintiff. Those words are precise and they constitute a proper test in the case at bar.

3. It is true that society's *application* of such a test to specific conduct or things may and does often vary according to the period of time when, and also as to the place where, the test is applied. On a public beach in America 50 years ago a person would have been considered immorally clothed if he or she had appeared in a bathing suit of a kind which today is commonly accepted as proper. The nature and extent of raiment now considered proper when worn in some parts of Africa would presently be considered immoral if worn upon the streets of Chicago. If a girl in a theatrical production in Boston had said, 50

years ago, "I am pregnant", the producer would have been charged with staging an immoral show. Today in America—even in Boston—the same incident would go unchallenged.

Despite these time and place variations in the consensus of people, there is at any given time and place substantial agreement as to what conduct or things are proscribed by the test as obscene and immoral. A violation of the proscription is generally and promptly detected and protested by ordinary persons, whether, for instance, it be an indecent display upon a public street, an improper remark in the living room of a home, or a vile and filthy exhibition of a person or persons at a public picnic or baseball game. The ordinary person knows what is obscene and immoral. That knowledge is a workable basis for regulation of such matters and it may be utilized by the chosen representatives of the people, in a state or political subdivision thereof, as a basis for legislative action aimed at the suppression of public obscenity and immorality. The public exhibition of moving pictures falls within the ambit of such regulation. The ordinance in question is the result of such action by the city council of Chicago.

The first and fourteenth amendments of the federal constitution do not, and were never intended to, shield public peddlers of obscenity and immorality. The ordinance now under attack is not unconstitutional on the grounds asserted.

4. The film, as an exhibit in this case, was projected before and viewed by us. We found that, from

beginning to end, the thread of the story is supercharged with a current of lewdness generated by a series of illicit sexual intimacies and acts. In the introductory scenes a flying start is made when a 16 year old boy is shown completely nude on a bathing beach in the presence of a group of younger girls. On that plane the narrative proceeds to reveal the seduction of this boy by a physically attractive woman old enough to be his mother. Under the influence of this experience and an arrangement to repeat it, the boy thereupon engages in sexual relations with a girl of his own age. The erotic thread of the story is carried, without deviation toward any wholesome idea, through scene after scene. The narrative is graphically pictured with nothing omitted except those sexual consummations which are plainly suggested but meaningfully omitted and thus, by the very fact of omission, emphasized. The words spoken in French are reproduced in printed English on the lower edge of the moving film. None of it palliates the effect of the scenes portrayed.

We do not hesitate to say that the calculated purpose of the producer of this film, and its dominant effect, are substantially to arouse sexual desires. We are of the opinion that the probability of this effect is so great as to outweigh whatever artistic or other merits the film may possess. We think these determinations are supported by the effect which this film would have upon the normal, average person. There is nothing in the record before us to indicate that the commissioner of police or the persons to whom he referred the film for inspection are not normal,

average persons. The record indicates the contrary. We agree with the opinions of the judge of the district court, the police commissioner and the persons whom he caused to inspect the film. All of them viewed the picture. They found it obscene and immoral.

We, therefore, conclude that the ordinance, as written and as applied to the film in this case, is not violative of the rights of plaintiff under either the first or fourteenth amendment of the constitution of the United States.

For the reasons hereinbefore set forth, the decree of the district court is affirmed.

AFFIRMED.

APPENDIX D

Municipal Code of the City of Chicago, Sections 155-1 to 155-7

Exhibit "B".

Chapter 155.

Motion Pictures.

Exhibition.

155-1. It shall be unlawful for any person to show or exhibit in a public place, or in a place where the public is admitted, anywhere in the city, any picture or series of pictures of the classes or kinds commonly shown in mutoscopes, kinetoscopes, or cinematographs, and such pictures or series of pictures as are commonly shown or exhibited in so-called penny arcades, and in all other automatic or motion picture devies, whether an admission fee is charged or not, without first having secured a permit therefor from the commissioner of police.

It shall be unlawful for any person to lease or transfer, or otherwise put into circulation, any motion picture plates, films, rolls, or other like articles or apparatus, from which a series of pictures for public exhibition can be produced, to any exhibitor of motion pictures, for the purpose of exhibition within the city, without first having secured a permit therefor from the commissioner of police.

The permit herein required shall be obtained for each and every picture or series of pictures exhibited and is in addition to any license or other imposition required by law or other provision of this code.

Appendix D

Municipal Code of the City of Chicago, Sections 155-1 to 155-7

Any person exhibiting any picture or series of pictures without a permit having been obtained therefor shall be fined not less than fifty dollars nor more than one hundred dollars for each offense. A separate and distinct offense shall be regarded as having been committed for each day's exhibition of each picture or series of pictures without a permit. (Amend. Coun. J. 12-21-39, p. 1396).

155-2. Before any such permit is granted, an application in writing shall be made therefor, and the plates, films, rolls, or other like apparatus by or from which such picture or series of pictures are shown or produced, or the picture or series of pictures itself as shown or exhibited, shall be shown to the commissioner of police, who shall inspect such plates, films, rolls, or apparatus, or such picture or series of pictures, or cause them to be inspected, and within three days after such inspection he shall either grant or deny the permit. In case a permit is granted, it shall be in writing and in such form as the commissioner of police may prescribe.

155-3. The fee for the original permit in each case shall be three dollars for each one thousand lineal feet of film or fraction thereof, and for each duplicate or print thereof an additional fee of one dollar for each one thousand lineal feet of film or fraction thereof, which fee shall be paid to the city collector before any permit is issued.

155-4. Such permit shall be granted only after the motion picture film for which said permit is requested

has been produced at the office of the commissioner of police for examination or censorship.

If a picture or series of pictures, for the showing or exhibition of which an application for a permit is made, is immoral or obscene, or portrays depravity, criminality, or lack of virtue of a class of citizens of any race, color, creed, or religion and exposes them to contempt, derision, or obloquy, or tends to produce a breach of the peace or riots, or purports to represent any hanging, lynching, or burning of a human being, it shall be the duty of the commissioner of police to refuse such permit; otherwise it shall be his duty to grant such permit.

In case the commissioner of police shall refuse to grant a permit as hereinbefore provided, the applicant for the same may appeal to the mayor. Such appeal shall be presented in the same manner as the original application to the commissioner of police. The action of the mayor on any application for a permit shall be final.

155-5. In all cases where a permit for the exhibition of a picture or series of pictures has been refused under the provisions of the preceding section because the same tends towards creating a harmful impression on the mind of children, where such tendency as to the minds of adults would not exist if exhibited only to persons of mature age, the commissioner of police may grant a special permit limiting the exhibition of such picture or series of pictures to persons over the age of twenty-one years; provided, such picture or pictures are not of such character as to

Appendix D

Municipal Code of the City of Chicago, Sections 155-1 to 155-7

tend to create contempt or hatred for any class of law abiding citizens.

When such special permit has been issued, it shall be unlawful for any person exhibiting said picture to allow any persons under the age of twenty-one years to enter the place where same is being exhibited or to remain in said place while any part of said picture or series of pictures is being shown.

Any person violating any of the provisions of this section shall be fined not less than ten dollars nor more than twenty-five dollars for each offense, and the admission of each person under twenty-one years of age, or permission to remain for such person under twenty-one years of age, shall constitute a distinct and separate offense.

155-6. The written permit provided for in this chapter shall be posted at or near the entrance of the theater, hall, room, or place where any permitted picture or series of pictures is being exhibited, at such a place and in such a position that it may easily be read by any person entering such theater, hall, room or place at any time when any such permitted picture or series of pictures is being exhibited whether in the day time or in the night time.

155-7. When a permit to show a picture or series of pictures is once granted to an exhibitor, the picture or series of pictures may be shown by any other exhibitor; provided, that the written permit is actually delivered to such other exhibitor and that a written notice of the transfer or lease to such other

exhibitor is first duly mailed by the transferee or lessee to the commissioner of police. Any number of transfers or leases of the same picture or series of pictures may be made, provided always that the permit is actually delivered to the transferee, or lessee and that such written notice be first mailed to the commissioner of police.

Said written notice shall contain the name and a brief description of the picture or series of pictures, the number of the permit, and the location of the building or place where the transferee or lessee proposes to exhibit such picture or series of pictures. The exhibition by any transferee or lessee of any permitted picture or series of pictures without first mailing such notice shall be considered a violation of this chapter, and a separate offense shall be regarded as having been committed for each day's exhibition by a transferee or lessee of each picture or series of pictures without the mailing of such notice.

In case a permit shall be refused for any such motion picture plates, films, rolls, or other like articles or apparatus from which a series of pictures for public exhibition can be produced, it shall be unlawful for any person to lease or transfer the same to any exhibitor of motion picture or otherwise put the same into circulation for purposes of exhibition within the city.

APPENDIX E

Amendments to the Constitution

AMENDMENT 1

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT 14

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

LIBRARY
SUPREME COURT, U.S.

Office - Supreme Court, U.S.
FILED
SEP 25 1957
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 372

TIMES FILM CORPORATION,

Petitioner,

v.

CITY OF CHICAGO, RICHARD J. DALEY and TIMOTHY J. O'CONNOR,

Respondents.

REPLY BRIEF

FELIX J. BILGREY
144 West 57th Street
New York 19, New York

ABNER J. MIKVA
231 South LaSalle Street
Chicago 4, Illinois

Counsel for Petitioner

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 372

TIMES FILM CORPORATION,

Petitioner,

v.

CITY OF CHICAGO, RICHARD J. DALEY and TIMOTHY J. O'CONNOR,

Respondents.

REPLY BRIEF

This Reply brief will serve to clarify certain points raised by Respondents in their Brief in Opposition.

I

The constitutional issue is properly before this Court.

Respondents err in contending that the constitutional issue is waived because the issuance of a permit was requested.

There is no inconsistency in Petitioner's position as it has not at any time attacked the section of the ordinance pertaining to fees. The sole constitutional issue raised is whether the *censorship* scheme is valid, and, far from seeking any "benefits" under this scheme, Petitioner urges this Court to strip the

ordinance of its censorship provisions, directing the issuance of a license pursuant to provisions of the ordinance not in dispute.

We find a comparable procedure in the *Burstyn* case, where this Court's ruling in effect restored a license which had been revoked, after issuance.

II

The motion picture is not obscene.

Petitioner has repeatedly stressed the artistic merits of "The Game of Love", contrary to what Respondents now would have this Court believe.

As part of the unrefuted evidence introduced by Petitioner is illuminating evidence by Petitioner's witness Shelton (R. pp. 18-36); document showing the film won an award at Edinburgh Film Festival in 1954 (Exhibit 1); document showing the film won Grand Prix du Cinema Francais 1954 (Exhibit 2); reviews from leading American newspapers including New York and Boston. (EXH. 16-30)

A print of the film is also part of the Record.

Respectfully submitted,

FELIX J. BILGREY
144 West 57th Street
New York 19, New York

ABNER J. MIKVA
231 South LaSalle Street
Chicago 4, Illinois

Counsel for Petitioner

BRIEF FOR THE RESPONDENTS IN OPPOSITION

Office - Supreme Court, U.S.
FILED
SEP 13 1957
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957.

No. 372

TIMES FILM CORPORATION,
Petitioner,

vs.

CITY OF CHICAGO, RICHARD J. DALEY, AND TIMOTHY J. O'CONNOR,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR RESPONDENTS IN OPPOSITION.

JOHN C. MELANIPHY,
Corporation Counsel of the City of Chicago,
511 City Hall, Chicago 2, Illinois,
Attorney for Respondents.

SYDNEY R. DREBIN,
Assistant Corporation Counsel,

ROBERT J. COLLINS,
Special Assistant Corporation Counsel,
Of Counsel.

THE DONNELLEY-GARDNER PRINTING COMPANY, CHICAGO

INDEX.

Summary of Argument.

PAGE

I. No constitutional issue is involved as petitioner is relying upon the ordinance and seeking benefits thereunder 2

II. The decision of the court below is not in conflict with the applicable decisions of this Court but is consistent therewith 5

III. No important question of Federal Law is involved which should be settled by this Court. 8

IV. The motion picture involved in this cause is obscene and should not be exhibited 10

Conclusion 13

Authorities Cited.

Cases.

Allen v. Zoning Board of Review (1949), 75 R. I. 321, 66 A. 2d 369 4

American Civil Liberties Union v. City of Chicago (1954), 3 Ill. 2d 334 ..... 6, 9

Block v. City of Chicago (1909), 239 Ill. 251 9

Holmby Productions, Inc. v. Vaughn (1955), 350 U. S. 870 ..... 5, 6

Joseph Burstyn, Inc. v. Wilson (1952), 343 U. S. 495 ..... 5, 6, 8, 9

Kingsley Books, Inc. v. Brown (1957), 354 U. S. 436 ..... 6, 7, 8, 10

Near v. Minnesota (1931), 283 U. S. 697 ..... 7, 8

Roth v. United States (1957), 354 U. S. 476 ..... 6, 8, 10

State v. Building Commission of Trumbull (1948), 135 Conn. 415, 65 A. 2d 165 3

Times Film Corporation v. City of Chicago (1957), 244 F. 2d 432 8

United Artists Corp. v. Thompson (1934), 339 Ill. 595 9

Text References.

11 Am. Jur. (1937), Const. Law, Sec. 123, pp. 768, 769 3

62 C. J. S. (1949), Mun. Corp., Sec. 433b, p. 831 3

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957.

No. 372.

TIMES FILM CORPORATION,

Petitioner,

vs.

CITY OF CHICAGO, RICHARD J. DALEY, AND TIMOTHY J. O'CONNOR,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR RESPONDENTS IN OPPOSITION.

MAY IT PLEASE THE COURT:

The respondents, City of Chicago, Richard J. Daley and Timothy J. O'Connor, oppose the petition for certiorari on the following grounds:

ARGUMENT.

I.

No Constitutional Issue Is Involved.

This Court will not accept a case unless a clear-cut constitutional issue is presented. If the petitioner has waived constitutional matters or is estopped from asserting them, this Court will reject a petition for certiorari.

Petitioner here seeks benefits under an ordinance of the City of Chicago, and, at the same time, attacks the validity of the ordinance on constitutional grounds. This irreconcilable position cannot lead to a clear-cut constitutional issue.

In its complaint, petitioner seeks the following relief (R. 6):

> "That the court issue an order • • • commanding defendants to forthwith issue to plaintiff *the permit required by the aforesaid municipal ordinance.*" (Emphasis added.)

If this Court should grant petitioner the relief it asks, a permit required by the ordinance would be ordered. The effect of such an order would be to sustain the ordinance. In such event, the court could not hold the ordinance to be unconstitutional. The inconsistent position taken by petitioner negatives the necessary constitutional issues which must be present before this Court will accept the case. Petitioner's ultimate goal, the issuance of "the permit required by the ordinance," effectively estops petitioner from attacking the validity of the ordinance upon which it relies and from which it seeks benefits. The rule is that one who invokes the provision of a law, in proceedings or otherwise, may be denied the right to question

its constitutionality. Thus, one who brings a suit under a statute thereby concedes its validity (11 Am. Jur. (1937) Const. Law. Sec. 123, pp. 768, 769). Petitioner here, not only brings suit under the ordinance, but the relief it seeks is the issuance of the permit "required by the ordinance."

Petitioner applied for a permit under the ordinance (Pet. for certiorari, p. 3). Upon refusal of the permit because the movie was found to be obsence, petitioner pursued its administrative remedies and appealed the decision to the Mayor who affirmed the action of the Police Commissioner in refusing a permit because of obscenity (Petition for certiorari, pp. 3, 4). By its complaint, petitioner still seeks "the permit required by the * * * ordinance" (R. 6).

Where one seeks to compel the issuance of a license under a licensing ordinance, he concedes the validity of the ordinance and no question of its validity is presented (62 C. J. S., Municipal Corporations (1949), Sec. 433b, p. 831). True if the application for license is denied, an attack on the licensing ordinance may be made, but the relief petitioner seeks here is to compel the issuance of the permit required by the ordinance. This effectively estops petitioner from challenging the validity of the ordinance.

In *State* v. *Building Commisison of Trumbull* (1948), 135 Conn. 415, 65 A. 2d 165, an application for a building permit was denied and an appeal taken to the zoning board of appeals which affirmed the denial of the permit. Mandamus was then brought to "compel the issuance of the permit". One of the contentions was that the ordinance was unconstitutional. The court rejected such contention and held that, *inasmuch as plaintiff there was seeking a permit*, he was in no position to challenge the validity of the ordinance. This is precisely the situation in the case at bar. Petitioner here is seeking the "permit required by the ordinance." Petitioner cannot, at the same time,

question the constitutionality of the ordinance requiring the permit.

In *Allen* v. *Zoning Board of Review*, (1949), 75 R. I. 321, 66 A. 2d 369, application was made for a variance from a zoning ordinance which application was denied. Certiorari was brought to review the decision of the board denying the variance. It was contended that the ordinance violated the State and Federal Constitutions. The court in holding the constitutional question was not properly before the court for decision, said (66 A. 2d 369, 370):

> "Furthermore, the constitutional question raised by the petitioner is not properly before us in this case. When a zoning board are asked to exercise their discretion under an application for an exception or variation to a zoning ordinance the applicant precludes himself from raising any question as to the constitutionality either of the enabling act or of the ordinance, because by filing such an application he necessarily admits the constitutionality of the laws upon which he relies."

The facts in the foregoing cases are analogous with those in the case at bar. Here, an application for a permit was made and, in the exercise of their discretion, both the Police Commissioner and the Mayor rejected the permit sought. Petitioner, by this suit, still seeks the "permit required by the ordinance." Petitioner is, therefore, "precluded" from raising constitutional issues and "necessarily admits the constitutionality of the laws upon which he relies." The Petition for a Writ of Certiorari should be denied for failure to present a clear-cut constitutional issue.

II.

The Decision of the Court Below Is Not in Conflict With the Applicable Decisions of This Court.

Petitioner contends that the court below has decided a federal question in a manner conflicting with the applicable decisions of this Court (Petition for Certiorari, pp. 5-7). In support of this contention, petitioner argues that the decision of the court below conflicts with the holdings of this Court in *Burstyn* v. *Wilson*, 343 U. S. 495 (1952) and *Holmby Productions, Inc.* v. *Vaughn*, 350 U. S. 870 (1955). We respectfully submit that there is no conflict between these decisions and the decision of the court below in the case at bar.

The *Burstyn* case dealt with a statute of the State of New York which this Court struck down as being "vague and indefinite." The New York authorities had rejected a motion picture on the ground that it was "sacrilegious." This Court expressly stated that its decision was limited to this single issue, saying (p. 505):

> "Since the term 'sacrilegious' is the sole standard under attack here, *it is not necessary for us to decide, for example, whether a state may censor motion pictures under a clearly drawn statute designed and applied to prevent the showing of obscene films. That is a very different question from the one now before us.*" (Emphasis added.)

In the case at bar we are dealing with "a clearly drawn statute designed and applied to prevent the showing of obscene films." Therefore, there is no basis for petitioner's reasoning that the decision of the court below is in conflict with this Court's decision in the *Burstyn* case. There is no similarity whatsoever. In the *Burstyn* case, this Court limited its decision to the "sacrilegious" standard in the New York statute. However, it impliedly held that "a

state may censor motion pictures under a clearly drawn statute designed and applied to prevent the showing of obscene films." The censorship ordinance here under attack has been held to be "clearly drawn" and "designed and applied to prevent the showing of obscene films" (*American Civil Liberties Union* v. *Chicago*, 3 Ill. 2d 334). The Illinois Supreme Court definition of obscenity and its decision in the *American Civil Liberties Union* case has received the approval of this Court (*Roth* v. *United States*, 354 U. S. 476, 489 footnote 26).

Nor is the decision of the court below in conflict with this Court's decision in the *Holmby* case. The *Holmby* case involved a *per curiam* decision where this Court held invalid a Kansas statute "on the authority of the *Burstyn* case." We have shown that the *Burstyn* case is not material to the issues in the case at bar. How, then can the *Holmby* case be pertinent? Both obviously dealt with statutory enactments defective because of vagueness or indefiniteness. Neither is controlling here where we are concerned with "a clearly drawn statute designed and applied to prevent the showing of obscene films." Because the *Holmby* case was a *per curiam* opinion, we do not know what issues were there presented to this Court. We do know, however, from the decision of the State Court, that the Kansas statute involved in the *Holmby* case employed a double standard. The first requirement was that the board was to "approve" films "which were moral and proper." This requirement is not present in the case at bar where it is the "duty" of the Police Commissioner to issue a permit for all movies unless he finds them to be "obscene" (R. 9; Petition for Certiorari, p. 64a). A standard requiring "approval" of films which are "moral and proper" is patently vague and indefinite. No such standard is involved in the case at bar.

Petitioner relies upon *Kingsley Books, Inc.* v. *Brown*, 354

U. S. 436 (Petition for certiorari, p. 6) as being determinative of its contention that this Court has held censorship of motion pictures to be unconstitutional *per se*. On the contrary, the *Kingsley* case supports our position and sustains the right of prior censorship. In the *Kingsley* case the provisions of the New York criminal statute dealing with pornography were amended to permit limited injunctive relief. The courts were empowered by the amendment to issue an injunction *pendente lite* restraining distribution of obscene material. It was contended (p. 440) that resort to this injunctive remedy was "beyond the constitutional power of New York in that it amounts to a prior censorship of literary product and as such is violative of that 'freedom of thought, and speech' which has been 'withdrawn by the Fourteenth Amendment from encroachment by the states.'" It was further contended that New York was limited to its criminal processes in seeking to protect its citizens. As to the latter contention, the court said (p. 441):

> "It is not for this Court thus to limit the State in resorting to various weapons in the armory of the law. Whether proscribed conduct is to be visited by a criminal prosecution or by a *qui tam* action or by an injunction or by some or all of these remedies in combination, is a matter within the legislature's range of choice."

In the *Kingsley* case the petitioner placed strong reliance on the case of *Near* v. *Minnesota*, 283 U. S. 697. This Court pointed out the "glaring" difference between *Near* v. *Minnesota* and the *Kingsley* case by showing that the *Near* case did not involve obscenity, and that the statute therein involved empowered the courts to enjoin dissemination of future issues because its past issues had been found offensive. Legislation of this nature is so obviously bad as to need no further comment. It would be tanta-

mount to the Commissioner of Police in the case at bar denying petitioner a permit to exhibit a motion picture the Commissioner had never seen merely because a prior film of the petitioner's had been found obscene *(Kingsley Books, Inc., v. Brown*, 354 U. S. 436, 445). In other words, the basis of the refusal would hinge on the individual applying and not on the subject matter of the film sought to be exhibited. Petitioner in the case at bar also has relied upon and misapplied the *Near* case (Petition for certiorari, p. 6).

Contrary to the assertion of petitioner (Petition for certiorari, p. 7) the right of prior censorship has received the endorsement of this Court in *Kingsley Books, Inc.*, v. *Brown*, 354 U. S. 436, and the right to prohibit obscenity has met the approval of this Court in *Roth* v. *United States*, 354 U. S. 476.

III.

The Decision of the Court Below Does Not Involve an Important Question of Federal Law Which Should Be Settled by This Court.

Petitioner argues that the *Burstyn* case stands for the proposition that censorship of motion pictures is unconstitutional *per se* (Petition for certiorari, pp. 7-10). Nothing could be further removed from the truth. This Court did not so hold in the *Burstyn* case. No court has ever so held.

In the *Burstyn* case this court held that the United States Constitution does not require absolute freedom to exhibit every motion picture of every kind at all times and all places (343 U. S. 495, at page 502). This statement was quoted with approval by the court below [*Times Film Corporation* v. *City of Chicago* (1957), 244 F. 2d 432, p. 434].

As we have heretofore shown, this Court in the *Burstyn* case explicitly noted that a clearly drawn statute designed

and applied to prevent the showing of obscene films was not involved. Despite this reservation, petitioner would have the *Burstyn* case applied throughout the land as being determinative of the fact that censorship of motion pictures is invalid, no matter what facts are involved and without regard to the language of the statute invoked.

The Supreme Court of Illinois has repeatedly sustained the validity of the Chicago ordinance providing for censorship of films (*Block* v. *City of Chicago*, 239 Ill. 251; *United Artists Corp.* v. *Thompson*, 339 Ill. 595; *American Civil Liberties Union* v. *City of Chicago*, 3 Ill. 2d 334). Petitioner contends that there is some confusion as to the status of the law because the Master in the case at bar found the ordinance to be unconstitutional, and that the motion picture was not obscene. This would mean confusion every time a Master in Chancery was overruled. From a factual standpoint, the film was found to be obscene by the Police Commissioner, the Board of Censors, the Mayor of the City of Chicago, eleven out of twelve jurors, the District Court and the Circuit Court of Appeals. This unanimity of opinion as to the obscenity of the movie does not lend itself to "confusion".

Petitioner argues that "the cardinal principle" of the *Burstyn* case has eroded into comparison of statutory enactments with those involved in the New York statute in that case. Petitioner does not state what the "cardinal principle" is, but we conceive it to be that a statute which is vague or indefinite will be held invalid. This Court specifically invited comparison of statutory language when it pointed out that its decision was limited to the word "sacrilegious" and that obscenity was not involved. Of course, every statute is phrased differently. And every case is factually different. This Court cannot hold with petitioner's argument that the *Burstyn* case was intended to meet any set of facts and every statute or ordinance. The

absurdity of his reasoning is apparent. Each set of facts and each statute must be met on its own grounds.

Petitioner argues (Petition for certiorari, p. 10) that the issue of obscenity has been settled by this Court in *Roth* v. *United States*, 354 U. S. 476 (referred to in its petition as *Alberts* v. *California*). We agree. In the *Roth* case this Court said (p. 481):

> "The dispositive question is whether obscenity is utterance within the area of protected speech and press. *Although this is the first time the question has been squarely presented to this Court, either under the First or * * * Fourteenth Amendment, expressions found in numerous opinions indicate that this Court has always assumed that obscenity is not protected by the freedoms of speech and press.*" (Emphasis added.)

and held (p. 485):

> "We hold that obscenity is not within the area of constitutionally protected speech or press."

This Court having crystalized the law of obscenity and prior censorship in the *Roth* and *Kingsley Books, Inc.* cases and the decision of the court below not being in conflict therewith, it is apparent there is no constitutional or substantial federal question presented in the Petition for Writ of Certiorari.

IV.

The Court Below Properly Held the Film Involved to Be Obscene.

Plaintiff contends that the motion picture with which we are concerned is not obscene (Petition for certiorari, pp. 10-11). Plaintiff links its argument here with further attacks on the constitutionality of the ordinance in question. Plaintiff does not sustain its position by any reference to the facts as disclosed in the opinion of the court below. The

court below did hold that "Expression by means of motion pictures is included within the free speech and free press guaranty of the first and fourteenth amendments" (Petition for certiorari, p. 56a; 244 F. 2d 434), but that the "public exhibition of obscene moving pictures may be barred by proceedings under a proper * * * ordinance * * * and that the rights of the exhibitor of such a picture under the first and fourteenth amendments * * * are not thereby violated" (Petition for certiorari, p. 57a; 244 F. 2d 435). The court below proceeded to find that the ordinance with which this court is concerned was not vague, and that its words were precise and constituted a proper test (Petition for certiorari, p. 58a; 244 F. 2d 435). The court below held that "The first and fourteenth amendments * * * do not, and were never intended to, shield public peddlers of obscenity and immorality." (Petition for certiorari, p. 59a; 244 F. 2d 436.)

In discussing the substance of the motion picture, the court below found that, from beginning to end, the thread of the story is supercharged with a current of lewdness generated by a series of illicit sexual intimacies and acts; that in the introductory scenes a 16 year old boy is shown completely nude on a bathing beach in the presence of a group of younger girls; that the boy is seduced by a woman old enough to be his mother; that under this experience, and an arrangement to repeat it, the boy thereupon engages in sexual relations with a girl of his own age; and that the calculated purpose and dominant effect of the producer of the film was substantially to arouse sexual desires (Petition for certiorari p. 60a; 244 F. 2d 436). These positive findings of fact outweigh anything petitioner has to say as to the obscenity of the film. Petitioner, in fact, says almost nothing on the subject contenting itself with vague generalities and unsupported conclusions.

Petitioner launches an attack on the five women censors who recommended that the film be denied a permit and charges that the court below "threw out all of the testimony dealing with the artistic merits" of the motion picture (Petition for certiorari, p. 11). Petitioner gives us no record reference as to the alleged "artistic merits" for the simple reason that there are none. Petitioner employed the same tactics in the court below but met with no success because the record wholly fails to sustain the claimed artistic merits. The record only shows an obscene film. The court below said (Petition for certiorari, p. 61a; 244 F. 2d 436): "We agree with the opinions of the judge of the district court, the police commissioner and the persons whom he caused to inspect the film. All of them viewed the picture. They found it obscene and immoral." The mayor also found the film to be obscene (Plaintiff's Exhibit 11) and so did a jury (R. 290).

Peddlers of obscenity, through the media of motion pictures, pocket books, television and other means, have flooded this nation with their vile products. When called to account, they invariably claim protection under the constitutional guarantees of freedom of speech and freedom of the press. The overwhelming juvenile problem confronting this country today is due, in no small measure, to these factors. This Court has never held that everything can be exhibited or published, any more than it would hold that nothing can be exhibited or published. Every case must be decided upon its own facts. Each poses different problems. This Court is bound by the facts as shown in the opinion of the court below, unless they are manifestly against the weight of the evidence. Petitioners do not argue that the facts in the opinion of the court below are against the weight of the evidence. Inasmuch as the record demonstrates conclusively that we are dealing with an obscene picture appealing to prurient desires, this Court should reject the Petition for Writ of Certiorari.

Conclusion.

We have demonstrated that there is no constitutional or substantial federal question presented in the case at bar. We have shown that the decision of the court below is not in conflict with the applicable decisions of this Court and that the decision of the court below is in conformity with the most recent pronouncements of this Court.

We have proven from the facts stated in the opinion of the court below that the motion picture in issue is obscene, and that it should not be inflicted upon the people.

Wherefore, respondents pray that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

JOHN C. MELANIPHY,
Corporation Counsel of the City of Chicago,
511 City Hall, Chicago 2, Illinois,
Attorney for Respondents.

SYDNEY R. DREBIN,
Assistant Corporation Counsel.

ROBERT J. COLLINS,
Special Assistant Corporation Counsel.
Of Counsel.